TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 158.

SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SANTA FE PACIFIC RAILROAD COMPANY, AND SOUTHERN CALIFORNIA RAILWAY COMPANY, APPELLANTS,

vs.

THE INTERSTATE COMMERCE COMMISSION.

No. 159.

SOUTHERN CALIFORNIA RAILWAY COMPANY, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION ET AL.

No. 160.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION ET AL.

No. 161.

SANTA FE PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION ET AL.

No. 162.

SOUTHERN PACIFIC COMPANY, APPELLANT,

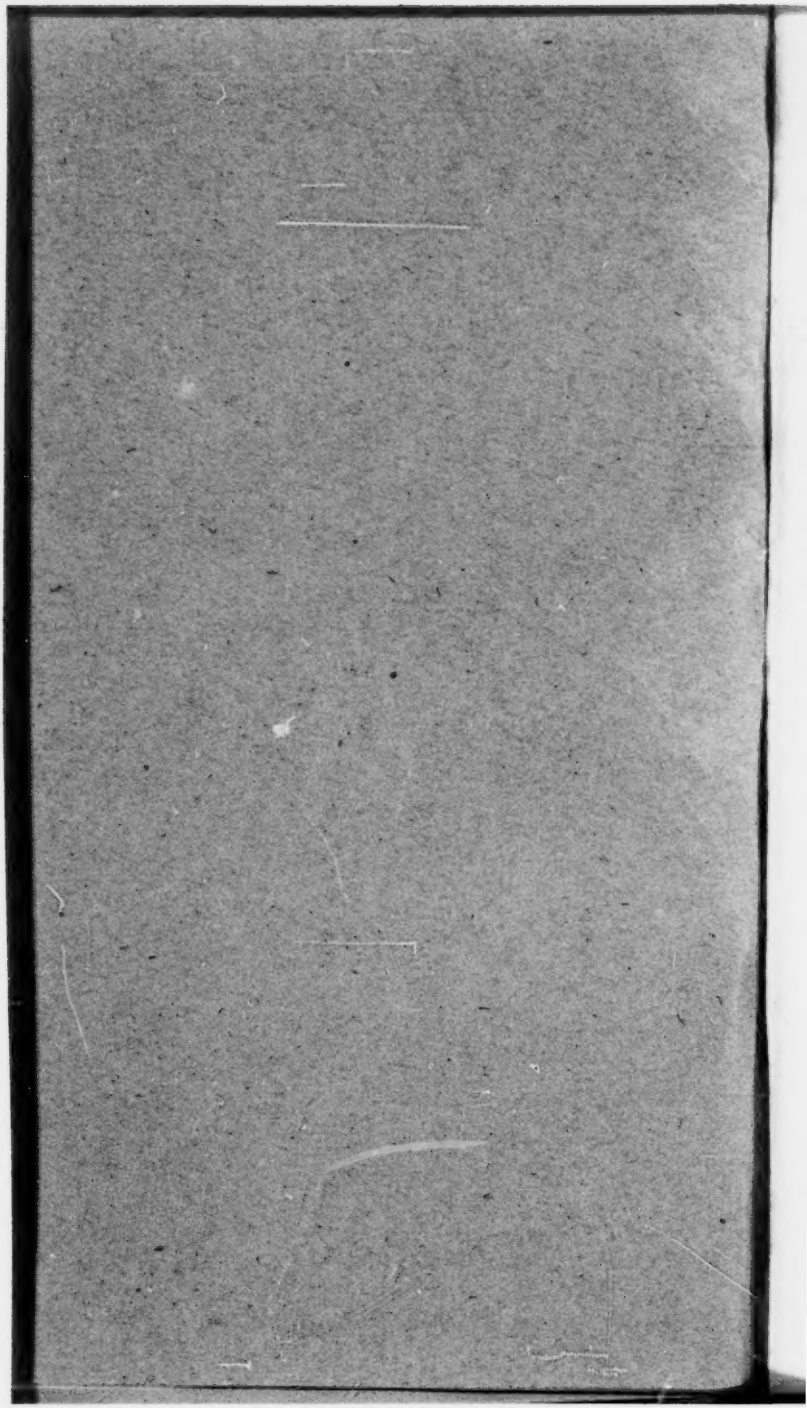
vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED JANUARY 11, 1905.

(19,596, 19,597, 19,598, 19,599, and 19,600.)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 1, 1905.

No. 161.

SANTA FE PACIFIC RAILROAD COMPANY, APPELLANT,

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THE INTERSTATE COMMERCE COMMISSION ET AL.

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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a In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Citation.

UNITED STATES OF AMERICA, *ss*:

To the above named complainant and all defendants other than Southern California Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, on the 24th day of December 1904, at 12 o'clock m. of said day, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in and for the southern district of California, southern division, wherein
b said Southern California Railway Company is appellant, to show cause, if any there be, why the decree entered in the above entitled court and cause on the 20th day of September, 1904, and amended on the 22nd day of September, 1904, being the decree upon the merits in said cause, should not be reversed and set aside and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 27th day of October, 1904.

OLIN WELLBORN, Judge.

Received copy of the within citation this 27 day of October, 1904.

JOSEPH H. CALL,
Sp'l Ass't U. S. Attorney, Attorneys for Complainant.

W. F. HERRIN,
P. F. DUNNE, &
J. W. McKINLEY,
Attorneys for Defendant Southern Pacific Company.

ROBERT DUNLAP,
T. J. NORTON,
Attorneys for All Defendants Other Than Southern Pacific Company.

c STATE OF CALIFORNIA, County of Los Angeles, } ss:

—— —— being by me first duly sworn, says that he is an officer, namely, the — of the —— —— named in the foregoing — that he has read said — and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of —— A. D. 190–.

—— ——,
Notary Public in and for the County of
Los Angeles, State of California.

[Endorsed:] No. 1039 In the U.S. circuit court 9th circuit, southern district of California, southern division Interstate Commerce Commission plaintiff *v.* Southern Pacific Company, *et al.* defendants. Citation. Filed Oct. 27 1904 Wm. M. Van Dyke, clerk Chas. N. Williams deputy T. J. Norton E. E. Millikin U. T. Clotfelter 516 Conservative Life building Los Angeles, Cal. attorneys for certain d'f'ts. Telephone main 1466.

d In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Citation.

UNITED STATES OF AMERICA, ss:

To the above named complainant and all defendants other than The Atchison, Topeka & Santa Fe Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, on the 24th day of December 1904, at 12 o'clock m. of said day, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in and for the

e southern district of California, southern division, wherein said Atchison, Topeka & Santa Fe Railway Company is appellant, to show cause, if any there be, why the decree entered in the above entitled court and cause on the 20th day of September, 1904, and amended on the 22nd day of September, 1904, being the decree upon the merits in said cause, should not be reversed and set aside and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 27th day of October, 1904.

OLIN WELLBORN, Judge.

Received copy of the within citation this 27 day of October, 1904.

JOSEPH H. CALL,
Sp'l Ass't U. S. Att'y, Attorneys for Complainant.
W. F. HERRIN,
P. F. DUNNE, &
J. W. McKINLEY,
Attorneys for Defendant Southern Pacific Company.
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for All Defendants Other Than Southern Pacific Company.

f STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

—— —— being by me first duly sworn, says that he is an officer, namely, the — of the —— —— named in the foregoing — that he has read said — and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters be believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of ——, A. D. 190–.

—— ——,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed:] No. 1039 In the U. S. circuit court 9th circuit, southern district of California southern division Interstate Commerce Commission plaintiff *v.* Southern Pacific Company *et al.* defendants. Citation Filed Oct. 27 1904. Wm. M. Van Dyke clerk Chas. N. Williams deputy T. J. Norton E. E. Millikin U. T. Clotfelter 516 Conservative Life building Los Angeles, Cal. attorneys for certain d'f'ts. Telephone main 1466.

g In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the above-named complainant and all defendants other than Santa Fe Pacific Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, on the 24th day of December 1904, at 12 o'clock m. of said day, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in and for the southern district of California, southern division, wherein
h said Santa Fe Pacific Railroad Company is appellant, to show cause, if any there be, why the decree entered in the above entitled court and cause on the 20th day of September, 1904, and amended on the 22nd day of September, 1904, being the decree upon the merits in said cause, should not be reversed and set aside and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 27th day of October, 1904.

OLIN WELLBORN, Judge.

Received copy of the within citation is hereby admitted this 27 day of October, 1904.

JOSEPH H. CALL,
Attorneys for Complainant.
W. F. HERRIN,
P. F. DUNNE,
J. W. McKINLEY,
Attorneys for Defendant Southern Pacific Company.
ROBERT DUNLAP &
T. J. NORTON,
Attorneys for All Defendants Other Than Southern Pacific Company.

i STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

—— —— being by me first duly sworn, says that he is an officer, namely, the — of the —— —— named in the foregoing — that he has read said — and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of —— A. D. 190–.

—— ——,
Notary Public in and for the County of
Los Angeles, State of California.

[Endorsed:] No. 1039 In the U. S. circuit court 9th circuit, southern district of California southern division Interstate Commerce Commission plaintiff *v.* Southern Pacific Company *et al.* defendants Citation Filed Oct. 27 1904 Wm. M. Van Dyke clerk Chas. N. Williams deputy T. J. Norton E. E. Millikin U. T. Clotfelter 516 Conservative Life building Los Angeles Cal., attorneys for certain d'f'ts Telephone main 1466.

j In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
} No. 1039. In Equity.

Citation.

UNITED STATES OF AMERICA, ss:

To the above named complainant, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, on the 24th day of December 1904, at 12 o'clock m. of said day, pursuant to an appeal filed in the

clerk's office of the circuit court of the United States in and for the southern district of California, southern division, wherein you are complainant and The Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company and The Southern California Railway Company are defendants and appellants, to show cause if any there be why said decree entered in the above entitled court and cause on the 20th day of September, 1904, and amended September 22nd, 1904, being the decree *k* upon the merits in said cause, should not be reversed and set aside and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 27th day of October, 1904.

OLIN WELLBORN, Judge.

Service of the within citation is hereby admitted this 27 day of Oct., 1904.

JOSEPH H. CALL,
Sp'l Ass't U. S. Att'y, Attorneys for Complainant.

l STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

—— —— being by me first duly sworn, deposes and says: That he is the — in the above entitled action; that he has heard read the foregoing — and knows the contents thereof; and that the same is true of — own knowledge, except as to the matters which are therein stated upon — information or belief, and as to those matters that he believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of —— 190–.

—— ——,
Notary Public in and for the County
of Los Angeles, State of California.

[Endorsed:] Original No. 1039. Dept. — In the United States circuit court 9th cir. so. dist. of Cal. so. div. The Interstate Commerce Commission, complainant, vs. The Southern Pacific Company, *et al.* defendants. Citation. Def'ts to Supreme Court. Filed Oct. 27 1904 Wm. M. Van Dyke clerk Chas. N. Williams deputy Wm. F. Herrin, P. F. Dunne, J. W. McKinley rooms 12–16 Rindge bldg. 254 So. Broadway Los Angeles, Cal. attorney- for defendants.

m In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as The Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Citation.

UNITED STATES OF AMERICA, *ss*:

To the above named complainant, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, on the 24th day of December 1904, at 12 o'clock m. of said day, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in and for the southern district of California, southern division, wherein you are complainant and The Southern Pacific Company is defendant and appellant, to show cause if any there by why said decree entered in the above entitled court and cause on the 20th day of September, 1904, and amended September 22nd, 1904, being the decree upon the merits in said cause, should not be reversed and set aside
n and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 27th day of October, 1904.

OLIN WELLBORN, Judge.

Service of the within citation is hereby admitted this 27 day of Oct., 1904.

JOSEPH H. CALL,
Sp'l Ass't U. S. Att'y,

—— ——,
Attorneys for Complainant.
ROBERT DUNLAP,
T. J. NORTON,
Att'ys for Defendants Other Than So. Pac. Co.

o STATE OF CALIFORNIA, }
County of Los Angeles, } *ss*:

—— ——, being by me first duly sworn, deposes and says: That he is the — in the above entitled action; that he has heard read the

foregoing — and knows the contents thereof; and that the same is true of — own knowledge, except as to the matters which are therein stated upon — information or belief, and as to those matters that he believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of ——, 190–.

—— ——,
Notary Public in and for the County of
Los Angeles, State of California.

[Endorsed:] Original No. 1039 Dept. — In the United States circuit court, 9th cir. so. dist. of Cal. so. div. The Interstate Commerce Commission, complainant, vs. The Southern Pacific Company, *et al.* defendant. Citation. So. P. Co. to Supreme Ct. Filed Oct. 27 1904 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy. Wm. F. Herrin, P. F. Dunne, J. W. McKinley, rooms 12–16 Rindge bldg. 254 So. Broadway, Los Angeles, Cal., attorney- for So. Pac. Co.

p In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as The Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants. } No. 1039.

1 In the Circuit Court of the United States for the Southern Division of the Southern District of California.

THE INTERSTATE COMMERCE COMMISSION
v.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and the Southern California Railway Company. } In Equity. No. 1039.

To the circuit court of the United States, sitting in equity, within and for the southern division of the southern district of California:

Your petitioner, The Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate

commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and an act approved February 11, 1893, humbly complaining, showeth :

I. That the Southern Pacific Company is a corporation chartered and existing under and by virtue of the laws of the State of Kentucky, having its principal office at the city of New York, in the State of New York; that the Atchison, Topeka and Santa Fe Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Kansas, having its principal office at the city of Topeka, in said State; that the Santa Fe Pacific Railway Company is a corporation chartered and existing under and by virtue of an act of Congress approved March 3, 1897, having its principal office at the city of Chicago, in the State of Illinois; that the
2 Southern California Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of California, having its principal offices in the cities of Los Angeles, in the State of California, and Chicago, in the State of Illinois.

II. That said railway companies named in the preceding paragraph I hereof, defendants herein, were on, to wit, the 3d day of March, 1900, and since have been common carriers engaged in the transportation of persons and property by railroad under joint through rates and as members of continuous through lines between points in different States of the United States, and particularly so engaged in the transportation of oranges, lemons, and other citrus fruits from Los Angeles and other points in southern California to points on and east of the Missouri river and to other eastern destinations, and as such common carriers, and in respect to such transportation, were and are subject to the provisions of said act entitled "An act to regulate commerce" and the amendments thereto.

III. That heretofore, to wit, on the said 3d day of March, 1900, the Consolidated Forwarding Company of Riverside, Cal., a corporation chartered and existing under and by virtue of the laws of the State of California, made and filed under section 13 of said act to regulate commerce a complaint to the complainant herein, The Interstate Commerce Commission, alleging violations on the part of said defendants of certain provisions of said act, as at large and more fully appears in and by the said complaint on file in the office of said commission, a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit A, and that a copy of said complaint, Exhibit A hereto, attested by the secretary of said commission, under the seal of said commission, was duly forwarded by said commission to each of said defendants, as required by section 13 of said act.

IV. That thereafterwards, to wit, on the 29th day of March, 1900, the said Southern California Railway Company, the Santa Fe
3 Pacific Railway Company, and the Atchison, Topeka and Santa Fe Railway Company filed their joint and several answer to

the said complaint, Exhibit A hereto, as at large and more fully appears in and by said answer on file in the office of the complainant herein, a copy of which answer is hereunto annexed and made a part of this bill of complaint as Exhibit B; and that on, to wit, the said 29th day of March, 1900, the said Southern Pacific Company filed an answer to the said complaint, Exhibit A hereto, as at large and more fully appears in and by said answer on file in the office of the complainant herein, a copy of which answer is hereunto annexed and made a part of this bill of complaint as Exhibit C.

V. That heretofore, to wit, on the said 3d day of March, 1900, the Southern California Fruit Exchange of Los Angeles, Cal., a corporation, chartered and existing under and by virtue of the laws of California, also made and filed under section 13 of said act to regulate commerce, a complaint to the complainant herein, The Interstate Commerce Commission, alleging violations on the part of said defendants of certain provisions of said act, as at large and more fully appears in and by the said complaint on file in the office of said commission, a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit D, and that a copy of said complaint, Exhibit D hereto, attested by the secretary of said commission, under the seal of said commission, was duly forwarded by said commission to each of said defendants, as required by section 13 of said act.

VI. That thereafterwards, to wit, on the 29th day of March, 1900, the said Southern California Railway Company, the Santa Fe Pacific Railway Company, and the Atchison, Topeka and Santa Fe Railway Company filed their joint and several answer to the said complaint, Exhibit D hereto, as at large and more fully appears in and
4 by said answer on file in the office of the complainant herein, a copy of which answer is hereunto annexed and made a part of this bill of complaint as Exhibit E; and that on, to wit, the 29th day of March, 1900, the said Southern Pacific Company filed an answer to the said complaint, Exhibit D hereto, as at large and more fully appears in and by said answer on file in the office of the complainant herein, a copy of which is hereunto annexed and made a part of this bill of complaint as Exhibit F.

VII. That thereafterwards the said causes, being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the complainant herein, and were heard together as one cause, at the city of Los Angeles, in the State of California, on, to wit, the 30th and 31st days of March, 1900, when said "Consolidated Forwarding Company" and said "Southern California Fruit Exchange," as well as the defendants herein, duly appeared by their attorneys, and at said hearing testimony was taken and argument had in behalf of all parties in interest.

VIII. That thereafterwards, to wit, on the 19th day of April, 1902, the complainant herein duly determined the matters and things in controversy between the said parties before it and made a report in writing in respect thereof, setting forth the conclusions it had reached,

and also the findings of fact upon which the said conclusions were based, as at large and more fully appears in and by said report on file in the office of said commission, a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit G.

IX. That after the determination of said causes as aforesaid the complainant on, to wit, the 2d day of June, 1902, duly formulated an order applicable to both said causes, which said order, in conformity with the conclusions of the complainant set forth in its report and opinion, Exhibit G hereto, directed the said de-
5 fendants to cease and desist from further maintaining and enforcing a rule or regulation whereby shippers of oranges, lemons, and other citrus fruits from points in southern California to points on or east of the Missouri river, and to other eastern destinations, are denied the right of selecting and using for the transportation of their said property any one, which said shippers may prefer, of the defendants' established and published joint or continuous lines or routes between any of the aforesaid points of shipment and destination and are restricted by the defendants to such route or line as they, the defendants, may select, and which said order further requires the defendants to keep open to the shippers of the aforesaid traffic between said points of destination their regularly published rates between said points on said traffic for use by said shippers on any of said lines or routes which may be preferred or selected by said shippers, and forbids the practice of defendants to the contrary, as more fully appears in and by said order, a copy of which is hereunto annexed and made a part of this bill of complaint as Exhibit H hereto; and complainant alleges that said order now remains in full force and effect.

X. That thereafterwards the complainant, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its report and opinion, Exhibit G hereto, together with copies of its said order, Exhibit H hereto, to be delivered to each of the said defendants herein, and complainant shows that the said defendants, unmindful of their duty in that regard, have, through their officers, servants, and attorneys, wholly disregarded and set at naught said order of complainant, Exhibit H hereto, and have wilfully and knowingly violated and disobeyed the same, and still do neglect and refuse to comply with the same or any part thereof.

XI. And complainant charges that the said rule of the defendants and practice thereunder, which they are required by said
6 order, Exhibit H hereto, to cease and desist from enforcing and maintaining, are in violation of the act to regulate commerce, in that, among other things, said rule and practice subject shippers of oranges, lemons, and other citrus fruits from points in southern California to points on and east of the Missouri river, and to other eastern destinations, to an undue or unreasonable prejudice or disadvantage, and, also, in that it subjects the traffic in oranges, lemons, and other citrus fruits between said points to an undue or

unreasonable prejudice or disadvantage, and gives the said defendants an undue or unreasonable preference or advantage.

XII. Wherefore the complainant prays:

1. That a subpœna or other suitable process may issue according to the course of equity, requiring the said defendants herein to appear at such time and place as this honorable court may determine, then and there to make full, complete, and perfect answer to all the matters and things hereinabove stated and charged, as fully and particularly as if each of the said defendants were specially interrogated in regard thereto, but not under oath, which is hereby waived.

2. That upon the filing of this petition an order may be made by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing bill of complaint.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful and lawful to enable it to form a just judgment in the matters and things stated and charged in the foregoing bill of complaint.

7 5. That upon the final hearing hereof a decree may be entered granting to complainant a writ of injunction, or other proper process, mandatory or otherwise, to restrain the said defendants, and each of them, and their respective officers, servants, and agents, from further continuing in their violation of and disobedience to the said order of the commission.

6. That a decree may be entered requiring the said defendants, and each of them, to pay such sum of money not exceeding the sum of $500 for every day, after a day to be named in such decree, that they shall respectively fail to obey the said injunction or other proper process.

7. That a decree may be entered requiring the said defendants to pay the costs of this proceeding and reasonable counsel fees.

8. For such other and further relief in the premises as to the court may seem meet, and justice and the equities of the cause may require.

THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,
[SEAL.] The Secretary Thereof, Thereunto Duly Authorized.

8 EXHIBIT A.

9 Before the United States Interstate Commerce Commission.

Petition.

THE CONSOLIDATED FORWARDING COMPANY, a Corporation, Complainant,
v.
SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE Railway Company, Santa Fe Pacific Railway Company, and Southern California Railway Company, Corporations, Defendants.

The petition of the above-named complainant, The Consolidated Forwarding Company, a corporation, respectfully shows:

I. That complainant is, and ever since the 8th day of November, 1899, has been, a corporation, duly organized, existing and acting under and by virtue of the laws of the State of California, with its principal place of business at the city of Riverside, county of Riverside, State of California; that said complainant is organized, among other things, for the purpose of transporting and shipping from different points to any part of the world all kinds of fruits, vegetables, and products of the soil grown or handled in California, and to own, hold, acquire, possess, and obtain, by lease, contract, purchase, or otherwise any and all kinds of property necessary in conducting such transportation business. That said complainant is, and ever since said 8th day of November, 1899, has been, engaged in the business of handling and transporting from various points in southern California to eastern markets oranges, lemons, and other fruits and products grown in southern California.

II. That the above-named defendant, Southern California Railway Company, is, and for a long time hitherto has been, a railroad corporation, organized, existing, and acting under and by
10 virtue of the laws of the State of California; that the defendant, Santa Fe Pacific Railway Company, is, and for a long time hitherto has been, a railroad corporation, organized under the laws of the United States; that the defendant, Atchison, Topeka and Santa Fe Railway Company, is, and for a long time hitherto has been, a railroad corporation, organized, existing, and acting under the laws of the State of Kansas; that said Southern California Railway Company, Santa Fe Pacific Railway Company, and Atchison, Topeka and Santa Fe Railway Company are each common carriers, and together constitute a through transcontinental railroad line between the city of National City, in the State of California, and the city of Chicago, in the State of Illinois, known as the "Santa Fe system," with main and branch lines of railroad passing through the city of Los Angeles, in said State of California, and other points in

the southern portion of said State; which said "Santa Fe system" is operated and controlled by said Atchison, Topeka and Santa Fe Railway Company. That said Atchison, Topeka and Santa Fe Railway Company, at said city of Chicago, and other intermediate points, makes connection with divers and sundry lines of railroad terminating at various eastern and Atlantic points.

III. That the defendant, Southern Pacific Company, is, and for a long time hitherto has been, a railroad corporation organized, existing and acting under the laws of the State of Kentucky, and it now operates and controls, and for a long time hitherto has operated and controlled, as a common carrier, a line of railroad between the city of San Francisco, State of California, by way of Los Angeles and other points in said State, and the city of El Paso, in the State of Texas, to the city of New Orleans, in the State of Louisiana, at which last-mentioned point and intermediate points on said line said Southern Pacific Company makes connections with divers and
11 sundry lines of railroad terminating at various eastern and Atlantic points. That said Southern Pacific Company also controls and operates a line of railroad from said city of Los Angeles, by way of Sacramento, and other points in California, to Ogden, in the State of Utah, at which point said Southern Pacific Company makes connections with divers and sundry lines of railroad between said city of Ogden and various eastern and Atlantic points. That the aforesaid lines of railroads, so operated and controlled by said Southern Pacific Company, are known as the "Southern Pacific system."

IV. That the aforesaid "Santa Fe system" and "Southern Pacific system" are the only railroads in the State of California having connections with any railroad operated outside of the State of California, and that said "Santa Fe system" and "Southern Pacific system" control and operate the only railroads for the transportation of freight from the State of California to other States or Territories, and that there is no other means of marketing the fruit products of the State of California, which are required to be transported by rail, than by and over one or the other of said systems.

V. That in southern California, to wit, in the counties of Los Angeles, San Bernardino, Riverside, Orange, and San Diego, the principal industry is the growing and marketing of oranges, lemons, and other fruits; that the larger portion of said fruits can only be disposed of in eastern markets; that the same require rapid transit, and can be transported in refrigerator cars, and not otherwise. That it is now, and for more than five years last past has been, the duty of the said railroad companies, as common carriers, to furnish, maintain and supply properly equipped refrigerator cars suitable for the carriage and transportation of the usual crops of oranges, lemons, and other fruits grown in said southern California.

VI. That complainant is informed and believes, and, upon
12 such information and belief alleges the fact to be, that, in disregard of their duty to furnish properly equipped refriger-

ator cars for the carriage and transportation, as aforesaid, of oranges, lemons, and other fruits grown in southern California, and for the purpose of giving to the Continental Fruit Express, a corporation organized, existing, and acting under the laws of the State of California, and to one Edwin T. Earl, and the Earl Fruit Company, a corporation organized, existing, and acting under the laws of California, an undue preference over complainant and other shippers, said Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railway Company, and said Southern Pacific Railway Company for itself, did, on or about the 1st day of November, 1897, enter into certain contracts and agreements with the said Continental Fruit Express to operate, for the term of five years, jointly with the said Continental Fruit Express, over the lines of said railroads composing said "Santa Fe system" and said "Southern Pacific system," certain refrigerator cars, for the benefit of said Continental Fruit Express.

VII. That complainant is informed and believes, and upon such information and belief alleges the fact to be, that, in further disregard of their duty to furnish properly equipped refrigerator cars for the carriage and transportation, as aforesaid, of the oranges, lemons, and other fruits grown in southern California, and for the purpose of giving to the Santa Fe Refrigerator Line and Armour & Co., and each of them, an undue preference over complainant and other shippers, said Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railway Company, and said Southern Pacific Railway Company for itself, did, on or about the 1st day of November, 1897, enter into certain contracts and agreements with the said Santa Fe Refrigerator Line and the said Armour & Co., for the term of five years, to operate, jointly with said Santa Fe Refrigerator Line and said Armour & Co., respectively, over the lines of said railroads composing the said "Santa Fe system" and said "Southern Pacific system" certain refrigerator cars for the benefit of said Santa Fe Refrigerator Line and said Armour & Co., respectively.

VIII. That by reason of the contracts and agreements mentioned in paragraphs VI and VII hereof, said railroad companies, and each of them, have ever since the execution of said agreements neglected and refused to furnish to complainant and other shippers refrigerator cars for the carriage and transportation of oranges and other fruits from southern California to eastern points; and said railroad companies, and each of them, have compelled, and do continue to compel, complainant and all other shippers, to use refrigerator cars furnished by said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co., which are hereinafter designated as private car lines.

IX. That a large proportion of the fruits shipped from southern California to eastern points, as aforesaid, can only be safely trans-

ported under refrigeration; that under the terms of the aforesaid agreements between said railroad companies and said private car lines said Continental Fruit Express, said Santa Fe Refrigerator Line, and said Armour & Co. are, and each of them is, authorized and permitted by said railroad companies to establish, in addition to the regular tariff for transportation established and published by defendants, a refrigerator tariff, which is made a charge against the shipments made under refrigeration by the complainant and other shippers; that said refrigeration tariff so established by said private car lines is largely in excess of the actual cost of refrigeration,
14 and the same yields a large profit to said private car lines; that the charges made for such refrigeration are excessive and exorbitant; that said charges have been and are collected by said railroad companies from complainant and other shippers, and are paid over by said railroad companies to said private car lines; that said exorbitant and excessive charges for refrigeration are made, as complainant is informed and believes, and upon such information and belief alleges the fact to be, for a service that said railroad companies are required by law to perform, at the reasonable cost thereof, as a necessary part of the service, attention, and care which said railroad companies are respectively required to give to said fruits while in transit, and for which said railroad companies have made a sufficient charge in the published tariff.

X. That at all times mentioned in this petition said Edwin T. Earl was, and is now, the owner, as petitioner is informed and believes, and upon such information and belief alleges the fact to be, of all or nearly all of the stock of the Earl Fruit Company, a corporation, and said Continental Fruit Express, and has used and now uses said corporations for the purpose of carrying on the private business and interests of the said Edwin T. Earl. That said Edwin T. Earl, transacting business under the name of the Earl Fruit Company, as aforesaid, is now, and at all times mentioned in this petition has been, a fruit shipper, in competition with complainant and other shippers of oranges, lemons, and other fruit from southern California to eastern markets. That said Edwin T. Earl has the exclusive control and management of the affairs of said Continental Fruit Express and that Edwin T. Earl, in operating the said Continental Fruit Express car line, is permitted by the defendants herein, and each of them, to have access to the cars and to have knowledge of the movements and destination of all shipments made by
15 complainant and other shippers, thereby affording to said Edwin T. Earl and the said Earl Fruit Company, as shippers of fruit, the opportunity to know to what markets the complainant and other shippers are consigning their fruits and to take advantage of such knowledge for the personal benefit of said Edwin T. Earl, and to the great detriment and irreparable injury of complainant and other shippers of fruit.

XI. Complainant further alleges that at sundry times since the 8th day of November, 1899, it has repeatedly demanded and re-

quired of said defendants, and each of them, that they should furnish to complainant, for the carriage of its oranges, lemons, and other fruits, which required refrigerator cars, proper refrigerator cars for the shipment and carriage thereof; but that the defendants, and each of them, have at all times refused, and still do refuse, to furnish or supply such cars to complainant, and have at all times compelled and still do compel complainant to make its shipments of said fruits in the cars of said private car lines, and to pay, in addition to the regularly established tariff rate, the unreasonable and exorbitant refrigeration charges hereinbefore mentioned.

XII. Complainant is informed and believes, and upon its information and belief alleges the fact to be, that said defendant Southern Pacific Company, and said Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said defendants Santa Fe Pacific Railway Company and Southern California Railway Company, did, prior to the last day of January, 1898 (the exact date whereof is unknown to complainant), enter into a contract, agreement, and combination to pool and divide between said Southern Pacific Company and said defendants composing the "Sante Fe system" the aggregate or net proceeds of the earnings of all business done by any of said defendants originating in southern California; that said contract, agreement, and combination is now
16 in force, and is acted upon and treated as valid by all of said defendants; that at the time of the making of said contract, agreement, and combination, and at all times herein mentioned, said Southern Pacific Company and said defendants, composing said "Sante Fe system," were, and are now, competing railroads, operating and doing business in the same territory.

XIII. Complainant further alleges that for many years prior to the 1st day of January, 1900, all shippers of oranges, lemons, and other fruits from southern California to eastern markets had been habitually accorded by the defendants herein, and had habitually exercised the right to select from the various connecting lines, parties to the published tariffs, the ones over which its shipments should be carried to destination, and by which the shippers should secure the most rapid transit, safest and promptest delivery at destination, and best and necessary service, such as ventilation of the cars in transit and round-housing of the same in cold weather.

XIV. That for the purpose of carrying out and making effective the aforesaid contracts and agreements between the defendants herein and said private car lines, and the aforesaid pooling contract, agreement, and combination between the said Southern Pacific Company and the other defendants herein, said defendants established a rule whereby after the 1st day of January, 1900, the initial carrier reserved to itself the absolute and unqualified right of routing beyond its own terminal all shipments of citrus fruits in carload lots; and complainant, upon its information and belief, alleges that said rule was not adopted in good faith by said defendants, nor was the same adopted by reason of any special reduced rates made by

the defendants and their connections, but that the action of the defendants in adopting said rule, and denying to complainant the right and privilege of selecting the most suitable and convenient connecting lines over which its shipments should be made to
17 destination, was arbitrarily adopted for the purpose of making effective said agreement with said private car lines, and said pooling agreement; that since the 1st day of January, 1900, defendants have enforced said rule as to all shipments of citrus fruit made by complainant; that the enforcement thereof has resulted in great detriment and irreparable injury and damage to complainant; that said defendants have since the 1st day of January, 1900, in many instances taken and routed the shipments of complainant over much longer, and, as complainant believes, more dangerous, routes than those selected and requested to be adopted by the complainant at the time of making said shipments.

Complainant further shows that by reason of the pooling arrangement and agreement hereinbefore referred to, and the arbitrary routing of the cars by defendants to carry out such pooling agreement, and to give a preference to said private car lines, there has been great delay in the shipments made by complainant and other shippers and serious loss occasioned to them by the decaying fruit in transit, owing to the longer time required to transport the same over the connecting lines designated by said defendants; and complainant further shows that it is informed and believes, and upon such information and belief alleges the fact to be that by reason of the aforesaid pooling arrangement the several lines of railroad connecting with the said defendants' lines of railroad are promised and guaranteed by the initial line their proportion of the business or a division of the business, and that consequently all competition for the carriage of said products is destroyed, and the connecting carriers are not obliged to secure and hold the business by reason of good service; that complainant and other shippers are thereby denied by the defendants and each of them, the right and privilege to select the routes by which they can get prompt and quick service.

XV. That all of the aforesaid acts of the defendants have
18 been done to the detriment of the complainant and other shippers without the reduction of the tariff rates for the transportation of lemons and oranges to eastern markets; that the tariff rate thereon for many years has been $1.25 per hundredweight on shipments to all eastern points beyond the State of Colorado, and that, notwithstanding the volume of the traffic has greatly increased, and the market price of lemons and oranges has greatly decreased, there has been no decrease made by said defendants in the charge for transportation of the same; and complainant alleges that the tariff rate now charged for the transportation of such fruit to eastern markets is excessive.

The complainant further shows that, by reason of the existence of the exclusive contracts with the private car lines hereinbefore mentioned, and to avoid their obligation and duty to furnish suitable

and sufficient refrigerator cars for the purpose of transporting said oranges and lemons, the said defendants, and each of them, for the purpose of excluding proper and suitable refrigerator cars owned by other car lines have arbitrarily increased the minimum carload weight on oranges and lemons from 24,000 to 26,000 pounds; and complainant further shows that this constitutes and is an overloading and excessive amount of perishable products for cars of the character in service, and results in great loss and damage to the complainant and other shippers.

Wherefore the petitioner prays that the defendants may be required to answer the charge, herein, and that after due hearing and investigation an order be made commanding the defendants, and each of them, to cease and desist from said violations of the "act to regulate commerce," and for such other and further order as the commission may deem necessary in the premises.

Dated at Los Angeles, Cal., February 26, 1900.

19 THE CONSOLIDATED FORWARDING COMPANY,
By W. G. SPENCE, Its Vice-President.

WM. J. HUNSAKER,
Room 408, Currier Building, Los Angeles, Cal.,
Attorney for Complainant.

STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

W. G. Spence, being duly sworn, says: That he is an officer, to wit, the vice-president of The Consolidated Forwarding Company, a corporation, the complainant in this proceeding; and that he makes this verification on behalf of said petitioner; that the matters set forth in the foregoing petition are true, as he verily believes.

W. G. SPENCE.

Subscribed and sworn to before me this 26th day of February, 1900.

[SEAL.] MOLLIE B. WILSON,
Notary Public in and for the County of
Los Angeles, State of California.

20 EXHIBIT B.

21 Before the United States Interstate Commerce Commission.

THE CONSOLIDATED FORWARDING COMPANY, Complainant,
v.
SOUTHERN CALIFORNIA RAILWAY COMPANY, SANTA FE PACIFIC Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, and Southern Pacific Company, Corporations, Defendants.

Answer.

The defendants, The Southern California Railway Company, The Santa Fe Pacific Railroad Company, and The Atchison, Topeka and Santa Fe Railway Company, severally answering the petition of the above-named complainant, respectfully state:

I. These defendants are not sufficiently advised in order to enable them to admit or deny the allegations contained in the first paragraph of said petition as to the organization of said complainant or the purposes thereof, but these defendants admit that complainant has been engaged in the business of handling, for transportation from various points in southern California to eastern markets, oranges, lemons, and other fruits and products grown in southern California; but these defendants are not informed that complainants are engaged in transporting such fruits or products.

II. These defendants admit the organization and existence of the defendant corporations as alleged in the second paragraph of the petition and that the lines of road operated by them constitute a through transcontinental line of railroad between the city of National City, in the State of California, and the city of Chicago, in the State of Illinois, known as the Santa Fe route, with main and branch lines of railroad passing through the city of Los Angeles.

22 They deny that the so-called Santa Fe system is operated and controlled by the Atchison, Topeka and Santa Fe Railway Company, but aver that each of the different corporations operates and controls its own lines of railway. They admit that the railway of the Atchison, Topeka and Santa Fe Railway Company at the city of Chicago and other intermediate points makes connection with various other lines of railroad terminating at various eastern and Atlantic points.

III. So far as these defendants are advised, the matters set forth in the third paragraph of the petition seem to be substantially true.

IV. These defendants admit that the statements in the fourth paragraph of the petition are true.

V. These defendants admit that in southern California, in the counties of Los Angeles, San Bernardino, Riverside, Orange and San Diego, the principal industry is the growing and marketing of oranges, lemons, and other fruits, and that a large proportion of said

fruit can only be disposed of in eastern markets, and that the same requires rapid transit; but these defendants deny that said fruit can be transported only in refrigerator cars, except that defendants admit that as to certain green fruits at certain times of the year refrigerator cars are necessary in order to properly preserve such fruits while being transported to eastern markets, and that in such cases they say that great care is required in handling such fruits during the transportation thereof, and that same must be under constant vigilance while in transit and at terminal points; but defendants deny that it is now, and for more than five years last past has been, the duty of these defendants as common carriers to furnish, maintain, and supply properly equipped refrigerator cars for the carriage and transportation of such fruit.

VI. These defendants deny that the Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railroad Company, or acting for itself or on behalf of said Southern California Railway Company or said Santa Fe Pacific Railroad Company did, on or before the 1st day of November, 1897, or at any other time, enter into a contract or agreement with the Continental Fruit Express, referred to in the sixth paragraph of said petition, or did enter into any contract or agreement with said Continental Fruit Express to operate certain or any refrigerator cars over said railroads, or any of them; and these defendants deny that they have in any way failed to exercise due diligence in supplying proper cars, but they say that in November, 1897, or about that time, on behalf of the Southern California Railway Company and the Santa Fe Pacific Railroad Company, contracts were entered into respectively with the Continental Fruit Express and also with the Fruit Growers' Express, two corporations owning refrigerator cars, whereby in connection with the Santa Fe Refrigerator Line said two companies were to supply these defendant railroad and railway companies with the equipment of refrigerator cars sufficient, as these defendants thought at the time, to handle the southern California fruit business; but these defendants deny that such contracts, or either of them, in any way gave or were intended to give the Earl Fruit Company or any other fruit grower or shipper any undue preference over complainant or any other grower or shipper, and these defendants aver that the opposite was one of the chief reasons why said contracts were entered into.

VII. Said defendants deny that the Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railroad Company, or acting for itself or on behalf of said Southern California Railway Company or on behalf of said Santa Fe Pacific Railroad Company, did, on the 1st day of November, 1897, or at any other time, enter into a certain contract or agreement with the Santa Fe Refrigerator Line or Armour & Co., or either of them referred to in the seventh paragraph of said

petition, or did enter into any contract or agreement with said Santa Fe Refrigerator Line or Armour & Co., or either of them, to operate certain or any refrigerator cars over said lines of railroad, or any of them; but avers that certain contracts were made on behalf of the Southern California Railway Company and the Santa Fe Pacific Railroad Company for the lease and use of certain cars of the Santa Fe Refrigerator Line and of Armour & Co., but deny that any such *contracts were entered into in disregard of the duty of these defend*ants in any respect or for the purpose of giving the Santa Fe Refrigerator Line or Armour & Co., or either of them, an undue preference over complainant or other shippers, but such contracts for lease and use were made for purely commercial reasons and not to work any undue preference in favor of any party.

VIII. These defendants deny that they, or either of them, have at any time neglected or refused to furnish to the complainant or other shippers, or to complainant and other shippers, refrigerator cars for the carriage or transportation of oranges and other fruits from southern California to eastern points. These defendants deny that they have compelled or continue to compel complainant or other shippers to use refrigerator cars furnished by the Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co., designated in said petition as private car lines, except that defendants admit that for some time past they have not had, and do not now have, in their service any other refrigerator cars than those furnished to them by said California Fruit Express, Santa Fe Refrigerator Line, and Armour & Co.; but these defendants allege that while said cars are in the service of transporting such fruit they are under the control and management of these defendants, except as to the refrigeration thereof, and that the same were and are
25 now the best equipped cars obtainable for such service.

IX. These defendants, and each of them, deny that a large proportion of the fruit shipped from southern California to eastern points as aforesaid can only be safely transported under refrigeration, but they, and each of them, admit that a portion of the green fruit shipped from southern California to eastern points can not during certain seasons of the year be safely transported without refrigeration. These defendants further deny that said California Fruit Express, said Santa Fe Refrigerator Line, and said Armour & Co., or either of them, is authorized or permitted, under the terms of the agreements referred to, to establish any refrigerator tariff, but these defendants admit that said private car lines are permitted to refrigerate such cars of fruit as require refrigeration, for which they are permitted to charge and receive reasonable compensation. These defendants, upon information and belief, deny that such charges for refrigeration are largely in excess of the actual cost of refrigeration or that the same yield a large profit to the said private car lines, and further deny, upon information and belief, that such charges made for such refrigeration are excessive or exorbitant. These defendants deny that such charges for refrigeration are for a service that said

railway companies are required by law to perform at the reasonable cost thereof, and, upon information and belief, deny that said railroad companies are required by law to perform the service of refrigeration at its reasonable cost, or at all; and these defendants deny that they have made a charge in their published tariffs sufficient to cover the cost of such refrigeration. These defendants say that it is well understood that the tariff charges made by them for transportation do not include and are not intended to include any service for furnishing ice or refrigeration. These defendants further say
26 that they have not undertaken and do not undertake, either by their tariffs or their contracts for transportation, to furnish ice or refrigeration for such cars.

X. These defendants have not sufficient knowledge to enable them, or either of them, to admit or deny the allegations contained in the tenth paragraph of said complaint, that said Edwin T. Earl is the owner of all or nearly all the stock of the Earl Fruit Company or Continental Fruit Express, or has used or now uses such corporations for the purpose of carrying on the private business and interests of said Edwin T. Earl. These defendants deny, upon their information and belief, that said Edwin T. Earl is now and at all the times mentioned in said petition, or is now or at all the times mentioned in said petition was a fruit shipper in competition with the complainant or shippers of said fruit from southern California to eastern markets. These defendants admit, however, that said Earl Fruit Company, a corporation as alleged, is now and at the times mentioned in said petition was a fruit shipper in competition with the complainant and other shippers of said fruit from southern California to eastern markets. These defendants have no knowledge sufficient to enable them to admit or deny the allegations, or any of them, that said Edwin T. Earl has the exclusive control and management of the affairs of the Continental Fruit Express. These defendants deny that said Edwin T. Earl is permitted by them, or any of them, to have access to cars while in service upon their lines of railroad; or that he is permitted to have knowledge of the movements or destination of all shipments or any shipments made by complainant or other shippers other than the knowledge that is afforded to shippers in general, no preference whatever being shown to the said Edwin T. Earl in this or any other respect.

XI. These defendants admit that complainant has demanded of them that it should be furnished refrigerator cars for the
27 shipment and carriage of oranges and lemons and other fruits, but these defendants deny that they, or either of them, have at any time refused or that they, or either of them, do now refuse to furnish or supply such cars to the complainant; and defendants further deny that they have at all times, or at all, compelled complainant or other shippers to make its or their shipments of fruit in such private cars, except as hereinbefore stated. These defendants admit that for some time past they have not had, and do not now have, in their service any other refrigerator cars than those

furnished to them by said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co.; but defendants allege that while said cars are in the service of transporting such fruit they are under the entire control and management of the defendants, except as to refrigeration thereof, and that the same were, and are now, the best equipped cars obtainable for such service, and the same are amply sufficient for such service. Defendants deny that complainant is compelled to pay, in addition to the regularly established tariff rate, unreasonable or exorbitant refrigeration charges.

XII. These defendants deny that the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said defendants The Santa Fe Pacific Railroad Company and The Southern California Railway Company, or acting on its own behalf or on behalf of its codefendants The Santa Fe Pacific Railroad Company and The Southern California Railway Company, or either of them, did, prior to the last day of January, 1898, or at any time, enter into a contract, agreement, or combination to pool and divide, or to pool or divide, between the said Southern Pacific Company and these defendants, or either of them, the aggregate or net proceeds of all or any business done by said
28 defendants, or either of them, originating in southern California or elsewhere. They deny that any such contract, agreement, or combination is now in force or is acted upon or treated as valid by all or any of said defendants; but these defendants admit that at all the times mentioned in said petition said Southern Pacific Company and these defendants were and are now competing railroads operated and doing business in the same territory, and they aver that the most active and energetic competition between said competing lines still exists.

XIII. These defendants admit that for many years prior to the 1st day of January, 1898, shippers of oranges, lemons, and other fruits from southern California to eastern points were accorded by these defendants and exercised the privilege of selecting from the various connecting lines parties to the published tariffs the ones over which their shipments would be carried to destination, but defendants say that they have no knowledge or information sufficient to enable them to answer as to whether the route selected by such shipper would secure the most rapid transit and the safest and promptest delivery at destination and the best service, such as ventilation of cars in transit and the roundhousing of the same in cold weather, as alleged in the thirteenth paragraph of said petition. Defendants deny, however, that such shippers ever had, or that they do now have, the right to select from the various connecting lines parties to the published tariffs the ones over which their shipments should be carried; but allege that while such privilege has been accorded to such shippers at times prior to the 1st day of January, 1900, that at all times defendants have reserved and do now reserve and claim the right to route all shipments tendered to any of them as an initial carrier. These defendants by reference thereto adopt

and make a part hereof as fully and completely as though herein set out in full each and every allegation, averment, matter,
29 and thing contained in the fourteenth and fifteenth paragraphs of the answer of the defendant The Southern Pacific Company, save and except only that in the place and stead of the words "defendant Southern Pacific Company" contained in the portions of the answer of the Southern Pacific Company hereby adopted, the words "these defendants" are to be substituted so as to make such allegation the allegation of these defendants.

XIV. These defendants deny that by the establishment of the rule in regard to the routing of shipments the initial carrier reserved to itself the absolute and unqualified right to route beyond its own terminals, but, as above stated, defendants allege that said right to route has always been reserved, and has been, and is now vested by law in the initial carrier. Defendants further deny that said rule was established for any of the purposes set forth in the fourteenth paragraph of said petition, and deny that said rule was not adopted by these defendants in good faith, and deny upon information and belief that the enforcement of such rule has resulted in great or any detriment or irreparable or any injury or damage to the claimant. These defendants deny that they have since the fi-st day of January, 1900, in many instances taken and routed the shipments of complainant over longer or more dangerous routes than those selected and requested to be adopted by the complainant at the time of making the shipment. They deny that by reason of any of the matters or things set forth and complained of in said fourteenth paragraph of said petition there has been great or any delay in the shipments made by complainant or other shippers or serious or any loss occasioned to them by the decaying of fruit in transit, and they deny that a longer time was required to transport such shipments over the lines over which the same moved than would be required to transport the same over connecting lines designated by complainant. They deny that for any of the
30 reasons set forth in said fourteenth paragraph of said petition, or at all, the several lines of railroad connecting with defendants' lines are promised or guaranteed by the initial line their proportion of the business, or a division of the business, and deny that all competition or any competition is destroyed, or that the connecting carriers are not required to hold and secure the business by reason of good service. They deny that the routes selected by the initial carrier do not afford prompt and quick service, but, on the contrary, allege that the routes so selected by the initial carrier, over which shipments have moved, have afforded just as quick and prompt service as though the routes had been selected by the complainant and other shippers; and these defendants say that as long as they continue to quote through rates and are responsible for such rates, it is their intention to maintain the right of the initial carrier to route the goods; that the rule was adopted in good faith and not in the interest of the refrigerator car lines, nor on account

of any alleged combination, but solely and wholly that the integrity of published rates might be preserved.

XV. These defendants deny that any of their acts have been done to the detriment of the complainant or other shippers. These defendants admit that the tariff rate for many years has been one dollar and twenty-five cents ($1.25) per hundredweight on fruit shipments to eastern points beyond the State of Colorado, and that there has been no decrease made by the defendants in such charge for transporting such freight, but defendants deny that the tariff rate now charged for the transportation of such fruit to eastern markets is excessive. Defendants deny that they have arbitrarily, or for any of the reasons set forth in the fifteenth paragraph of said petition, increased the minimum carload weight of oranges and lemons from twenty-four thousand (24000) to twenty-six
31 thousand (26000) pounds, and they deny that such increase of the minimum weight is an overloading or excessive amount of perishable products for cars of the character in service, or that it results in great or any loss or damage to complainant or other shippers.

Wherefore these defendants pray that the said petition and complaint may be dismissed.

E. D. KENNA,
C. N. STERRY,
ROBERT DUNLAP,
Attorneys for the Southern California Railway Company, Santa Fe Pacific Railroad Company, and the Atchison, Topeka and Santa Fe Railway Company.

STATE OF ILLINOIS, } ss:
County of Cook, }

Paul Morton, of lawful age, being first duly sworn, on oath deposes and says that he is the second vice-president of the Atchison Topeka and Santa Fe Railway Company, and also of the Southern California Railway Company, and also of the Santa Fe Pacific Railroad Company, and has general charge of the traffic matters of said companies, respectively; that he has read the foregoing answer, and that the statements therein contained are true, as he verily believes.

PAUL MORTON.

Sworn to before me and subscribed in my presence this 22d day of March, 1900.

[SEAL.] A. C. SPEIRS,
Notary Public.

My commission expires June 13, 1903.

32 EXHIBIT C.

33 Before the Interstate Commerce Commission of the United States.

THE CONSOLIDATED FORWARDING COMPANY, a Corporation, Complainant,
v.
SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE Railway Company, Santa Fe Pacific Railway Company, and Southern California Railway Company, Corporations, Defendants.

Answer of Defendant Southern Pacific Company.

Now comes The Southern Pacific Company, one of the defendants named in the petition herein, and without waiving any objections it may have to said petition, makes its answer thereto as follows:

I That as to the allegations of paragraph I of said petition concerning the existence of the complainant as a corporation, and its corporate purposes, and its transactions as a corporation, the Southern Pacific Company has no information or belief sufficient to enable it to answer said allegations of paragraph I, or any of them, and it, therefore, for want of such information and belief, denies each and all of said allegations.

II. That as to the allegations of paragraph II of said petition the defendant Southern Pacific Company leaves the complainant to make such proof as it may be advised.

III. Said defendant Southern Pacific Company admits as true the allegations of paragraph III of said petition.

IV. Said defendant, The Southern Pacific Company, leaves the complainant to make such proof concerning the allegations of paragraph IV of said petition as it may be advised.

V. Said defendant, The Southern Pacific Company, denies
34 that the oranges, lemons, and other fruits mentioned in paragraph V of said petition require rapid transit in their transportation to eastern markets. On the contrary said defendant alleges that rapid transit in the transportation of said fruits is not necessary when refrigerator cars are used, and that said fruits can at certain seasons of the year be shipped in ventilated cars and in other cars than refrigerator cars, and that a large part of said fruit is shipped from southern California to eastern markets without refrigeration, although refrigerator cars and ventilated cars, and cars combining refrigerator and ventilating devices are used in such transportation.

Said defendant further denies that it is, or ever has been, the duty of the defendants, as common carriers, or any of them, to furnish, maintain, or supply properly equipped or other refrigerator cars for

the carriage or transportation of oranges, lemons or other frui
grown in southern California.

VI. Said defendant, The Southern Pacific Company, denies th
in disregard of its duty to furnish properly equipped refrigerat
cars for the carriage or transportation of oranges, lemons, and oth
fruits grown in southern California, or for the purpose of giving
the Continental Fruit Express and one Edwin T. Earl, and the Ea
Fruit Company, or either or any of them, an undue or other prefe
ance over complainant or other shippers, or for any purpose, sai
railroad companies named therein, or any of them, and particular
this defendant, did at any time enter into any contract or contract
agreement or agreements, with the said Continental Fruit Expre
to operate, for the term of five years, or for any other time, jointl
or otherwise, with the said Continental Fruit Express, over any lin
of railroad, certain or any refrigerator cars for the benefit of sai
Continental Fruit Express; but this defendant alleges that, i
35 order to provide over its lines the best and safest methods an
appliances for the transportation of oranges, lemons, and oth
fruits grown in southern California, it did, on or about November
1897, make contract with the Continental Fruit Express, by way
lease, for the use and control on the lines of railroad operated b
this defendant of certain refrigerator and ventilator cars, 500 i
number (increased by supplemental contract to 850 cars), which co
tract of lease by its terms is to be and remain in force and effect fo
the term of five years from and after its date.

VII. Said defendant, The Southern Pacific Company, denies tha
in disregard of its duty to furnish properly equipped refrigerato
cars for the carriage or transportation of oranges, lemons, and othe
fruits grown in southern California, or at all, or for the purpos
mentioned in paragraph VII of said petition, or for any purpose, th
railroad companies named in said paragraph VII, or any of them
and particularly this defendant, did on or about November 1, 189
or at any other time, enter into any contract or contracts, agreemen
or agreements, with the Santa Fe Refrigerator Line or Armour
Co. for the term of five years, or any term, to operate jointly o
otherwise, with said Santa Fe Refrigerator Line or said Armour
Co., over any lines of railroad, for the benefit, or otherwise, of sai
Santa Fe Refrigerator Line or said Armour & Co., certain or an
refrigerator cars, but said defendant alleges the fact to be that, i
order to provide over its lines the best and safest methods and ap
pliances for the transportation of oranges, lemons, and other fruit
grown in southern California, it did, on or about November 1, 189
make contracts with the Santa Fe Refrigerator Line and with Ar
mour & Co., by way of lease, for the use and control, while on th
lines of railroad operated by this defendant, of certain refrigerato
and ventilator cars, 1,000 in number (increased by supple
36 mental contract with Armour & Co. to 1,650), which contract
of lease by their terms are to be and remain in force and ef

fect for the term of five years from and after their dates, respectively.

VIII. Said defendant, The Southern Pacific Company, denies that, severally or in combination with any defendant herein, it has ever at any time neglected or refused to furnish to complainant or other shippers refrigerator cars for the carriage or transportation of oranges or other fruits, or that it has at any time compelled or does now compel the complainant, or any other shipper, to use refrigerator cars furnished by said Continental Fruit Express, Santa Fe Refrigerator Line, or said Armour & Co., designated in said petition as private car lines. On the contrary, this defendant alleges that it has at all times furnished or offered to furnish to complainant and all other shippers in southern California not only suitable cars for the transportation of oranges, lemons, and other fruits, but the best cars that could be obtained for such transportation; and while this defendant admits that it has not for some time past and has not now in service on its lines any other refrigerator cars than those leased as aforesaid from the said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co., yet this defendant alleges that said cars are the best equipped cars obtainable for the transportation of oranges, lemons, and other fruits and furnish the best service to shippers of such fruits that has been devised.

IX. Said defendant, The Southern Pacific Company, denies that said fruits shipped from southern California to eastern points can only be safely transported under refrigeration, but admits that at times of excessive heat such fruit can be more safely transported under refrigeration by ice than otherwise, and alleges that a
37 large part of said fruit is shipped from southern California to eastern markets without refrigeration.

Said defendant, The Southern Pacific Company, alleges that under the terms of its contracts of lease of the refrigerator and ventilator cars aforesaid with said Continental Fruit Express, said Santa Fe Refrigerator Line, and said Armour & Co., said lessors and each of them undertake to provide at different points along the lines of railroad the ice necessary for the refrigeration in said cars leased from each of the said lessors respectively, and to ice said cars when and as required, for which service said lessors are authorized and permitted, under the terms of said contracts of lease respectively, to charge a reasonable compensation therefor, which is to be paid by the shipper in addition to the charge or tariff for the transportation by the defendant of said fruit.

Said defendant, The Southern Pacific Company, according to its information and belief, denies that said refrigeration tariff, or charge, so made by said lessors for the icing and refrigeration of said cars is largely or at all in excess of the actual cost of refrigeration, or that the same yields a large profit, or any unreasonable profit to said lessors.

Said defendant, The Southern Pacific Company, according to its information and belief, denies that the charges made for such refrig-

eration are excessive or exorbitant or anything more than a reasonable charge for such refrigeration.

Said defendant, The Southern Pacific Company, denies that said charges for refrigeration are made for a service that this defendant, or said railroad companies, are required by law to perform at the reasonable cost thereof as a necessary part of the service, or at all, or that said railroad companies, including this defendant, are required by law, or at all, to give such attention to said fruits while in transit.

38 Said defendant, The Southern Pacific Company, denies that it has made a sufficient charge in its published tariff to cover the cost of such refrigeration. On the contrary, said defendant alleges that the freight rate for such transportation which it receives according to its published tariff is reasonable and just to the shipper and does not afford to this defendant any greater return for the service of transportation performed by it independently of refrigeration than it is entitled to receive.

X. That as to the allegation in paragraph X of said petition, that Edwin T. Earl was at the times mentioned in the petition and is now the owner of all, or nearly all, of the stock of the Earl Fruit Company, a corporation, and of said Continental Fruit Express, a corporation, and has used and now uses said corporations for the purpose of carrying on his private business and interest, said defendant Southern Pacific Company has not sufficient information and belief to enable it to answer said allegations, or any of them. Said defendant therefore denies said allegations, and each and every part thereof.

Said defendant, The Southern Pacific Company, denies that said Edwin T. Earl, in operating said Continental Fruit Express Line, or by reason of his connection therewith, is permitted by this defendant to have access to the cars, or to have knowledge of the movements and destination of all or any shipments made by complainant or other shippers, or that said Edwin T. Earl is thereby afforded, or is afforded at all, the opportunity to know to what market the complainant and other shippers are consigning their fruits, or to take advantage of such knowledge for his personal benefit, to the great or any detriment or irreparable or other injury of complainant or any other shipper of fruit.

XI. Said defendant Southern Pacific Company denies that it has at any time refused to furnish to the complainant, for the car-

39 riage of its oranges, lemons, or other fruits, proper refrigerator cars for the shipment or carriage thereof; and denies that it has at any time compelled or does now compel the complainant to make its shipments of said fruits in the cars of said private car lines, or in any cars other than those which it has leased from the said lessors above named, or that it has required the complainant to pay any unreasonable or exorbitant refrigerator charges mentioned in said petition or otherwise. And in this behalf said defendant alleges that during certain seasons of the year refrigeration is unnecessary for fruits transported in such cars, and during such seasons said cars

are used in all respects as ordinary ventilated cars, and no charge whatever is made for their use over and above the ordinary legal tariff for the transportation of freight thereon. That at other seasons refrigeration is necessary for the proper care and preservation of the fruit transported in said cars, and such refrigeration can only be done by persons, firms, or agencies stationed at proper points upon the railroads over which said cars are transported and having the necessary appliances therefor. That such refrigeration involves the exercise of special skill and judgment and can not be undertaken by railroad companies in addition to their ordinary duties of transportation. That each of the lessors of said refrigerator cars, as aforesaid, has a proper equipment of materials for refrigeration, in charge of competent men, at such places upon the said railroad as they can be made most available and perform the necessary service of refrigeration, making, as this defendant is informed and believes, a reasonable charge therefor. Neither this defendant nor any of the railroad companies named in said petition have any interest whatever in the charges collected by said lessors, or any of them, for refrigeration, and whatever amount is collected therefor by said railroad companies is merely so collected as an accommodation to said lessors, and is paid over to them without diminution or reduction.

And this defendant further alleges that the refrigerator cars leased to it as aforesaid by the said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co. are sufficient for all the purposes of its business, and that it could not utilize any more of such cars were the same to be offered to it; that said lessors of said cars are not shippers of fruit, and that all the profit or emolument they receive from said cars are the rentals paid by this defendant and other railroad companies for the use of the same and the sums received for services rendered in refrigeration, as aforesaid.

This defendant further alleges that in consequence of the movement of fruit in large quantities during a limited season of the year it is absolutely essential that a supply of refrigerator cars should be available to move such fruit, and by reason of its contracts and agreements with said car owners as aforesaid this defendant has been able to supply its patrons with sufficient cars for said service.

And this defendant alleges that it has, by the means aforesaid, at all times been able to and has supplied complainant and all other shippers of fruit over its said line with proper refrigerator cars for the shipment and carriage thereof.

XII. Said defendant, The Southern Pacific Company, denies that it and said Atchison, Topeka and Santa Fe Railway Company, acting for itself, or on behalf of said defendants, Santa Fe Pacific Railway Company and Southern California Railway Company, did at any time enter into any contract, agreement, or combination, to pool or divide between said defendant, Southern Pacific Company, said defendants composing the "Santa Fe system" the aggregate or net, or any proceeds of the earnings of all or any business done by any

of said defendants originating in southern California or elsewhere, or that said or any such contract, agreement, or combination
41 is now or was ever in force, or is now or was ever acted upon or treated as valid by all or any of said defendants. And said defendant admits that at all times in said petition mentioned it and the defendants composing the "Santa Fe system" have operated over and are now operating competing railroads in the same territory.

XIII. Said defendant, The Southern Pacific Company, denies that for many years prior to January 1, 1900, the complainant, or other shipper of oranges, lemons, or other fruits from southern California to eastern markets, had been habitually accorded by said defendant, or had habitually exercised the right to select from the various connecting lines parties to the published tariffs, the ones over which its shipments should be carried to destination, or that such routing by said complainant or other shippers was necessary to secure the most rapid transit or the safest or promptest delivery at destination, or the best or necessary service, such as ventilation of the cars in transit, or the roundhousing of the same in cold weather, or any service connecting with said transportation, but this defendant admits that for some time previous to January 1, 1900, it had not always exercised the right (always expressly reserved by it concerning all goods received by it for transportation over connecting lines) to determine the routes or connecting lines over which it would forward such goods to destination.

XIV. Said defendant, The Southern Pacific Company, denies that for the purposes mentioned in paragraph XIV of said petition it established a rule whereby after the 1st day of January, 1900, the initial carrier reserved to itself the absolute and unqualified right of routing beyond its own terminal all shipments of citrus fruits in carload lots; but said defendant admits that it has at all times since January 1, 1900, exercised its legal right (always reserved as
42 above stated) to select and determine the route or connecting line or lines over which it would forward goods received by it for shipment to points of destination beyond its own lines, where it issues through bills of lading guaranteeing the through rate of transportation.

Said defendant, Southern Pacific Company, denies that said right of routing was not exercised by it in good faith, or that its action in exercising such right of routing and denying to complainant such alleged right was arbitrarily adopted for the purpose of making effective the agreement with said private car lines and said pooling agreement alleged in said petition; and said defendant denies that the enforcement of its right of routing, as above stated, has resulted in great or any detriment, or irreparable or any injury or damage, to complainant; and said defendant denies that it has since January 1, 1900, in many instances, or at all, taken or routed shipments of complainant over much longer or more dangerous routes than those selected or requested to be adopted by the complainant at the time

of making said shipments, or at any time. On the contrary, this defendant alleges that the routes selected by it have been generally those which were most favorable to the prompt and safe movement of the goods transported, and that such routing by this defendant since January 1, 1900, has been quite as favorable, if not more favorable, to the interest of shippers than the routes formerly selected and used by the shippers themselves.

And in this behalf said defendant, The Southern Pacific Company, alleges that it has since January 1, 1900, exercised, and is now exercising, its lawful right of routing over connecting lines as aforesaid for the purpose of maintaining lawful rates and preventing violations of the second and third sections of the interstate-commerce law, and this defendant alleges that in exercising its right of routing shipments over connecting lines as aforesaid it has always
43 consulted the interest of shippers and followed their advice and suggestions in all respects where it could be done without defeating its purpose to enforce lawful rates for transportation and to prevent violations of the law as aforesaid.

This defendant further denies that by reason of the pooling arrangement or agreement alleged in the petition, or any other such arrangement, or the arbitrary routing of cars by the defendants, as alleged in said petition, or otherwise, there has been great or any delay in the shipments made by complainant or other shippers, or serious or any loss occasioned to them by the decaying of fruit in transit owing to the longer time required to transport the same over the connecting lines designated by defendants, nor is any longer time required to transport said fruit thereover.

This defendant denies that by reason of the pooling arrangement alleged in the petition, or any pooling arrangement, the several lines of railroad connecting with the defendant's line of railroad are promised or guaranteed by the initial line their proportion, or any proportion, of the business, or a division of the business, and that consequently all competition for the carriage of said products is destroyed and the connecting carriers are not obliged to secure and hold the business by reason of good service, or that complainant or other shippers are thereby denied by the defendants, and particularly by this defendant, any right or privilege to which they are by law entitled to select the routes by which they can get prompt or quick service.

XV. This defendant denies that any of the acts or things complained of by complainant have been done to the detriment of complainant or other shippers, or that the tariff rate now charged for the transportation of the fruit mentioned to eastern markets is excessive. On the contrary, such rate is just and reasonable to
44 the shipper, and affords the defendant no more than a reasonable return for the transportation service rendered by it; that said tariff rate as originally established was not compensatory to this defendant, but was established and maintained by it for the purpose of affording to the fruit growers of southern California an

outlet and market for their products, and with the hope that in time such business would be developed until the transportation of said products would be of sufficient volume to make said tariff rate of transportation compensatory to this defendant, and that although the volume of said traffic has greatly increased since its beginning, yet considering the present volume of such traffic, or its probable increase in the future, the said tariff rate is not, as above stated, unjust or unreasonable to the shipper, nor does it afford to this defendant any more than a reasonable reward for the service of transportation rendered by it.

This defendant denies that it, severally or in combination with any of its co-defendants, has arbitrarily, or for any of the reasons alleged in the petition, increased the minimum car-load weight of oranges and lemons from 24,000 to 26,000 pounds; and denies that such increase of the minimum weight is an overloading or excessive amount of perishable products for cars of the character in service, or that it results in great or any loss or damage to the complainant or other shippers. And this defendant denies that any of its acts, either severally or in combination with any of its codefendants, have been done to the detriment of complainant or other shippers.

Wherefore this defendant prays that the petition in this proceeding be dismissed.

SOUTHERN PACIFIC COMPANY,
By WM. F. HERRIN, Its Chief Counsel.

45 STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

William Sproule, being duly sworn, says: That he is an officer, to wit, freight traffic manager of The Southern Pacific Company, one of the defendants in this proceeding, and that the foregoing answer is true, as he verily believes.

WM. SPROULE.

Subscribed and sworn to before me this 28th day of March, 1900.

JUDSON C. CLEMENTS,
Interstate Commerce Commissioner.

46 EXHIBIT D.

47 Before the United States Interstate Commerce Commission.

THE SOUTHERN CALIFORNIA FRUIT EXCHANGE, a Corporation, Complainant,
vs.
SOUTHERN CALIFORNIA RAILWAY COMPANY, SANTA FE PACIFIC Railway Company, Atchison, Topeka and Santa Fe Railway Company, and Southern Pacific Company, Corporations, Defendants.

Petition.

The petition of the above-named complainant, The Southern California Fruit Exchange, a corporation, respectfully shows:

I. That complainant is, and for more than four years last past has been, a corporation duly organized, existing, and acting under and by virtue of the laws of the State of California, with its principal place of business at the city of Los Angeles, county of Los Angeles, State of California; that said complainant is organized, among other things, for the purpose of, and is authorized by its articles of incorporation, to engage in the general business of buying, marketing, and selling oranges, lemons, raisins, and other green and dried fruits, grains, vegetables, and other southern California products, to act as the agent for the fruit exchanges of southern California in marketing and selling the fruit controlled by said exchanges, to engage in and conduct a transfer, forwarding, and shipping business, to purchase, hold, lease, or otherwise acquire freight cars and other vehicles, and to engage in the transportation business. That for more than four years last past said complainant has acted as agent for sundry other fruit exchanges, corporations organized, existing, and acting under the laws of the State of Cali-
48 fornia and doing business in the southern portion of said State, for the purpose of forwarding, marketing, and selling the products of southern California handled by said fruit exchanges, and complainant is still engaged in and will continue to carry on and transact such business.

II. That the above-named defendant, Southern California Railway Company, is, and for a long time hitherto has been, a railroad corporation, organized, existing, and acting under and by virtue of the laws of the State of California; that the defendant Santa Fe Pacific Railway Company is, and for a long time hitherto has been, a railroad corporation organized under the laws of the United States; that the defendant Atchison, Topeka and Santa Fe Railway Company is, and for a long time hitherto has been, a railroad corporation organized, existing, and acting under the laws of the State of Kansas; that said Southern California Railway Company, Santa Fe Pacific Railway Company, and Atchison, Topeka and Santa Fe

Railway Company are each common carriers, and together constitute a through transcontinental railroad line between the city of National City, in the State of California, and the city of Chicago, in the State of Illinois, known as the "Santa Fe system," with main and branch lines of railroad passing through the city of Los Angeles, in said State of California, and other points in the southern portion of said State; which said "Santa Fe system" is operated and controlled by said Atchison, Topeka and Santa Fe Railway Company. That said Atchison, Topeka and Santa Fe Railway Company, at said city of Chicago and other intermediate points, makes connection with divers and sundry lines of railroad terminating at various eastern and Atlantic points.

III. That the defendant Southern Pacific Company is, and for a long time hitherto has been, a railroad company organized, existing and acting under the laws of the State of Kentucky, and
49 it now operates and controls, and for a long time hitherto has operated and controlled, as a common carrier, a line of railroad between the city of San Francisco, State of California, by way of Los Angeles and other points in said State, and the city of El Paso, in the State of Texas, to the city of New Orleans, in the State of Louisiana, at which last-mentioned point and intermediate points on said line said Southern Pacific Company makes connections with divers and sundry lines of railroad terminating at various eastern and Atlantic points. That said Southern Pacific Company also controls and operates a line of railroad from said city of Los Angeles, by way of Sacramento and other points in California, to Ogden, in the State of Utah, at which point said Southern Pacific Company makes connections with divers and sundry lines of railroad between said city of Ogden and various eastern and Atlantic points. That the aforesaid lines of railroads so operated and controlled by said Southern Pacific Company, are known as the "Southern Pacific system."

IV. That the aforesaid "Santa Fe system" and "Southern Pacific system" are the only railroads in the State of California having connections with any railroad operated outside of the State of California, and that said "Santa Fe system" and "Southern Pacific system" control and operate the only railroads for the transportation of freight from the State of California to other States or Territories, and that there is no other means of marketing the fruit products of the State of California which are required to be transported by rail than by and over one or the other of said systems.

V. That in southern California, to wit, in the counties of Los Angeles, San Bernardino, Riverside, Orange, and San Diego, the principal industry is the growing and marketing of oranges, lemons, and other fruits; that the larger portion of said fruits can only be disposed of in eastern markets; that the same require rapid transit and can be transported in refrigerator cars, and not otherwise; that it is now, and for more than five years last past has been, the duty of the

said railroad company, as common carriers, to furnish, main-
50 tain, and supply properly equipped refrigerator cars suitable for the carriage and transportation of the usual crops of oranges, lemons, and other fruits grown in said southern California.

VI. That complainant is informed and believes, and upon such information and belief alleges the fact to be, that, in disregard of their duty to furnish properly equipped refrigerator cars for the carriage and transportation, as aforesaid, of oranges, lemons, and other fruits grown in southern California, and for the purpose of giving to the Continental Fruit Express, a corporation organized, existing, and acting under the laws of the State of California, and to one Edwin T. Earl, and the Earl Fruit Company, a corporation organized, existing and acting under the laws of California, an undue preference over complainant and other shippers, said Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railway Company, and said Southern Pacific Railway Company, for itself, did, on or about the 1st day of November, 1897, enter into certain contracts and agreements with the said Continental Fruit Express to operate, for the term of five years, jointly with the said Continental Fruit Express, over the lines of said railroads composing said "Santa Fe system" and said "Southern Pacific system," certain refrigerator cars for the benefit of said Continental Fruit Express.

VII. That complainant is informed and believes, and upon such information and belief alleges the fact to be, that, in further disregard of their duty to furnish properly equipped refrigerator cars for the carriage and transportation, as aforesaid, of the oranges, lemons, and other fruits grown in southern California, and for the purpose of giving to the Santa Fe Refrigerator Line and Armour & Co., and each of them, an undue preference over complainant and
51 other shippers, said Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railway Company, and said Southern Pacific Railway Company for itself, did, on about the first day of November, 1897, enter into certain contracts and agreements with the said Santa Fe Refrigerator Line and the said Armour & Co., for the term of five years, to operate jointly with said Santa Fe Refrigerator Line and said Armour & Co., respectively, over the lines of said railroads composing the said "Santa Fe system" and said "Southern Pacific system" certain refrigerator cars, for the benefit of said Santa Fe Refrigerator Line and said Armour & Co., respectively.

VIII. That by reason of the contracts and agreements mentioned in paragraphs VI and VII hereof, said railroad companies and each of them, have ever since the execution of said agreements neglected and refused to furnish to complainant and other shippers refrigerator cars for the carriage and transportation of oranges and other fruits from southern California to eastern points, and said railroad

companies, and each of them, have compelled and do continue to compel complainant and all other shippers to use refrigerator cars furnished by said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co., which are hereinafter designated as private car lines.

IX. That a large proportion of the fruits shipped from southern California to eastern points, as aforesaid, can only be safely transported under refrigeration; that under the terms of the aforesaid agreements between said railroad companies and said private car lines said Continental Fruit Express, said Santa Fe Refrigerator Line, and said Armour & Co. are, and each of them is, authorized and permitted by said railroad companies to establish, in addition to the regular tariff for transportation established and published by defendants, a refrigerator tariff, which is made a charge against the shipments made under refrigeration by the complainant and other shippers; that said refrigeration
52 tariff, so established by said private car lines, is largely in excess of the actual cost of refrigeration, and the same yields a large profit to said private car lines; that the charges made for such refrigeration are excessive and exorbitant; that said charges have been and are collected by said railroad companies from complainant and other shippers and are paid over by said railroad companies to said private car lines; that said exorbitant and excessive charges for refrigeration are made, as complainant is informed and believes, and upon such information and belief alleges the fact to be, for a service that said railroad companies are required by law to perform at the reasonable cost thereof as a necessary part of the service, attention and care which said railroad companies are respectively required to give to said fruits while in transit, and for which said railroad companies have made a sufficient charge in the published tariff.

X. That at all times mentioned in this petition said Edwin T. Earl was and is now the owner, as petitioner is informed and believes, and upon such information and belief alleges the fact to be, of all or nearly all of the stock of the Earl Fruit Company, a corporation, and said Continental Fruit Express, and has used and now uses said corporations for the purpose of carrying on the private business and interests of the said Edwin T. Earl. That said Edwin T. Earl, transacting business under the name of the Earl Fruit Company, as aforesaid, is now, and at all times mentioned in this petition has been, a fruit shipper in competition with complainant and other shippers of oranges, lemons, and other fruit from southern California to eastern markets. That said Edwin T. Earl has the exclusive control and management of the affairs of said Continental Fruit Express, and that Edwin T. Earl, in operating the said Continental Fruit Express car line, is permitted by the defendants
53 herein, and each of them, to have access to the cars, and to have knowledge of the movements and destination of all shipments made by complainant and other shippers, thereby afford-

ing to said Edwin T. Earl and the said Earl Fruit Company, as shippers of fruit, the opportunity to know to what markets the complainant and other shippers are consigning their fruits, and to take advantage of such knowledge for the personal benefit of said Edwin T. Earl, and to the great detriment and irreparable injury of complainant and other shippers of fruit.

XI. That since the making of the contracts and agreements hereinbefore mentioned between defendants and said private car lines, said defendants, and each of them, have repeatedly refused to grant to the complainant herein, or to any other shipper or shippers, the same or similar privileges to those which are at all times given and granted by said railroad companies, pursuant to the terms of said contracts and agreements, to said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co.

Complainant further alleges that it has, at sundry times since the aforesaid contracts and agreements between the said defendants and said private car lines were entered into as aforesaid, made request of and demand upon the said defendants, and each of them, for a like privilege to furnish and have operated, for complainant's benefit and for the transportation of the products handled by it, suitable refrigerator cars, to be operated under like terms to those accorded by said defendants to said Continental Fruit Express, said Santa Fe Refrigerator Line and said Armour & Co., respectively; but that said defendants, and each of them, have at all times denied and refused to comply with complainant's said demands, and have refused, and still refuse, to permit complainant, or any other shipper, to exercise any of the aforesaid privileges accorded to and exercised by
54 said Continental Fruit Express, said Santa Fe Refrigerator Line, and said Armour & Co.

XII. Complainant further alleges that at sundry times during the two years last past it has repeatedly demanded and required of said defendants, and each of them, that they should furnish to complainant, for the carriage of its oranges, lemons, and other fruits which required refrigerator cars, proper refrigerator cars for the shipment and carriage thereof; but that the defendants, and each of them, have at all times refused, and still do refuse, to furnish or supply such cars to complainant, and have at all times compelled, and still do compel, complainant to make its shipments of said fruits in the cars of said private car lines, and to pay, in addition to the regularly established tariff rate, the unreasonable and exorbitant refrigeration charges hereinbefore mentioned.

XIII. Complainant is informed and believes, and upon its information and belief alleges the fact to be, that said defendant Southern Pacific Company, and said Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said defendants, Santa Fe Pacific Railway Company and Southern California Railway Company, did, prior to the 1st day of January 1898 (the exact date whereof is unknown to complainant), enter into a contract, agreement, and combination to pool and divide between said Southern

Pacific Company and said defendants composing the "Santa Fe system" the aggregate or net proceeds of the earnings of all business done by any of said defendants originating in southern California; that said contract, agreement, and combination is now in force, and is acted upon and treated as valid by all of said defendants; that at the time of the making of said contract, agreement, and combination, and at all times herein mentioned, said Southern Pacific Company and said defendants composing said "Santa
55 Fe system" were, and are now, competing railroads, operating and doing business in the same territory.

XIV. Complainant further alleges that for many years prior to the 1st day of January, 1900, it and other shippers of oranges, lemons, and other fruits from southern California to eastern markets had been habitually accorded by the defendants herein, and had habitually exercised, the right to select from the various connecting lines, parties to the published tariffs, the ones over which its shipments should be carried to destination, and by which the shippers should secure the most rapid transit, safest and promptest delivery at destination, and best and necessary service, such as ventilation of the cars in transit and roundhousing of the same in cold weather.

XV. That for the purpose of carrying out and making effective the aforesaid contracts and agreements between the defendants herein and said private car lines, and the aforesaid pooling contract, agreement, and combination between the said Southern Pacific Company and the other defendants herein, said defendants established a rule whereby after the 1st day of January, 1900, the initial carrier reserved to itself the absolute and unqualified right of routing beyond its own terminal all shipments of citrus fruits in carload lots; and complainant, upon its information and belief, alleges that said rule was not adopted in good faith by said defendants, nor was the same adopted by reason of any special reduced rates made by the defendants and their connections, but that the action of the defendants in adopting said rule, and denying to complainant the right and privilege of selecting the most suitable and convenient connecting lines over which its shipments should be made to destination, was arbitrarily adopted for the purpose of making effective said agreement with said private car lines and said pooling agreement; that since the 1st day of January, 1900, defendants have enforced
56 said rule as to all shipments of citrus fruit made by complainant; that the enforcement thereof has resulted in great detriment and irreparable injury and damage to complainant; that said defendants have, since the 1st day of January, 1900, in many instances, taken and routed the shipments of complainant over much longer and, as complainant believes, more dangerous routes than those selected and requested to be adopted by the complainant at the time of making said shipments.

Wherefore the petitioner prays that the defendants may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendants, and

each of them, to cease and desist from said violations of the "Act to regulate commerce," and for such other and further order as the commission may deem necessary in the premises.

Dated at Los Angeles, Cal., February 24, 1900.

[SEAL.] SOUTHERN CALIFORNIA FRUIT EXCHANGE,
By R. H. WILKINSON, Its Secretary.

WM. J. HUNSAKER,
Room 408, Currier Building, Los Angeles, Cal.,
Attorney for Complainant.

STATE OF CALIFORNIA, County of Los Angeles, } ss:

R. H. Wilkinson, being duly sworn, says that he is an officer, to wit, the secretary, of The Southern California Fruit Exchange, a corporation, the complainant in this proceeding, and that he makes this verification on behalf of said petitioner; that the matters set forth in the foregoing petition are true, as he verily believes.

R. H. WILKINSON.

Subscribed and sworn to before me this 24th day of February, 1900.

[SEAL.] MOLLIE B. WILSON,
Notary Public in and for the County of
Los Angeles, State of California.

57 EXHIBIT E.

58 Before the United States Interstate Commerce Commission.

THE SOUTHERN CALIFORNIA FRUIT EXCHANGE, Complainant,
v.
SOUTHERN CALIFORNIA RAILWAY COMPANY, SANTA FE PACIFIC Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, and Southern Pacific Company, Corporations, Defendants.

Answer.

These defendants, The Southern California Railway Company, The Santa Fe Pacific Railroad Company, and The Atchison, Topeka and Santa Fe Railway Company, severally answering the petition of the above-named complainant, respectfully state:

I. These defendants are not sufficiently advised in order to enable them to admit or deny the allegations contained in the first paragraph of said petition, as to the organization of said complainant or the purposes thereof, but these defendants admit that complain-

ant has been engaged in the business of handling for transportation from various points in southern California to eastern markets oranges, lemons, and other fruits and products grown in southern California; but these defendants are not informed that complainants are engaged in transporting such fruits or products.

II. These defendants admit the organization and existence of the defendant corporations as alleged in the second paragraph of the petition, and that the lines of road operated by them constitute a through transcontinental line of railroad between the city of National City in the State of California and the city of Chicago in the State of Illinois, known as the Santa Fe route, with main and branch lines of railroad passing through the city of Los Angeles.

59 They deny that the so-called Santa Fe system is operated and controlled by the Atchison, Topeka and Santa Fe Railway Company, but aver that each of the different corporations operates and controls its own line of railway; they admit that the railway of the Atchison, Topeka and Santa Fe Railway Company at the city of Chicago and other intermediate points makes connection with various other lines of railroad terminating at various eastern and Atlantic points.

III. So far as these defendants are advised, the matters set forth in the third paragraph of the petition seem to be substantially true.

IV. These defendants admit that the statements in the fourth paragraph of the petition are true.

V. These defendants admit that in southern California, in the counties of Los Angeles, San Bernardino, Riverside, Orange, and San Diego, the principal industry is the growing and marketing of oranges, lemons, and other fruits, and that a large proportion of said fruit can only be disposed of in eastern markets, and that the same requires rapid transit; but these defendants deny that said fruit can be transported only in refrigerator cars, except that defendants admit that as to certain green fruits at certain times of the year refrigerator cars are necessary in order to properly preserve such fruits while being transported to eastern markets, and that in such cases they say that great care is required in handling such fruits during the transportation thereof, and that the same must be under constant vigilance while in transit and at terminal points, but defendants deny that it is now and for more than five years last past has been the duty of these defendants as common carriers to furnish, maintain, and supply properly equipped refrigerator cars for the carriage and transportation of such fruit.

VI. These defendants deny that the Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railroad Company, or acting for itself, or on behalf of said Southern

60 California Railway Company or said Santa Fe Pacific Railroad Company, did, on or before the 1st day of November, 1897, or at any other time, enter into a contract or agreement with the Continental Fruit Express, referred to in the sixth paragraph of

said petition, or did enter into any contract or agreement with said Continental Fruit Express to operate certain or any refrigerator cars over said railroads or any of them; and these defendants deny that they have in any way failed to exercise due diligence in supplying proper cars, but they say that in November, 1897, or about that time, on behalf of the Southern California Railway Company and the Santa Fe Pacific Railroad Company contracts were entered into, respectively, with the Continental Fruit Express and also with the Fruit Growers' Express, two corporations owning refrigerator cars, whereby, in connection with the Santa Fe Refrigerator Line, said two companies were to supply these defendant railroad and railway companies with the equipment of refrigerator cars sufficient, as these defendants thought at the time, to handle the southern California fruit business. But these defendants deny that such contracts, or either of them, in any way gave or were intended to give the Earl Fruit Company or any other fruit grower or shipper any undue preference over complainant or any other grower or shipper, and these defendants aver that the opposite was one of the chief reasons why said contracts were entered into.

VII. Said defendants deny that the Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said Southern California Railway Company and said Santa Fe Pacific Railroad Company, or acting for itself or on behalf of said Southern California Railway Company, or on behalf of said Santa Fe Pacific Railroad Company, did, on the 1st day of November, 1897, or at any other time, enter into a certain contract or agreement with the Santa Fe Refrigerator Line, or Armour & Co., or either of them, referred to in the seventh paragraph of said petition, or did enter into any contract or agreement with said Santa Fe Refrigerator
61 Line, or Armour & Co., or either of them, to operate certain or any refrigerator cars over said lines of railroad or any of them; but avers that certain contracts were made on behalf of the Southern California Railway Company and the Santa Fe Pacific Railroad Company for the lease and use of certain cars of the Santa Fe Refrigerator Line and of Armour & Co., but deny that any such contracts were entered into in disregard of the duty of these defendants in any respect, or for the purpose of giving the Santa Fe Refrigerator Line, or Armour & Co., or either of them, an undue preference over complainant or other shippers, but such contracts for lease and use were made for purely commercial reasons and not to work any undue preference in favor of any party.

VIII. These defendants deny that they or either of them have at any time neglected or refused to furnish to the complainant or other shippers, or to complainant and other shippers, refrigerator cars for the carriage or transportation of oranges and other fruits from southern California to eastern points. These defendants deny that they have compelled or continue to compel complainant or other shippers to use refrigerator cars furnished by the Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co., designated in said

petition as private car lines, except that defendants admit that for some time past they have not had and do not now have in their service any other refrigerator cars than those furnished to them by said California Fruit Express, Santa Fe Refrigerator Line, and Armour & Co., but these defendants allege that while said cars are in service of transporting such fruit they are under the control and management of these defendants except as to the refrigeration thereof, and that the same were and are now the best-equipped cars obtainable for such service.

IX. These defendants and each of them deny that a large proportion of the fruit shipped from southern California to eastern
62 points as aforesaid can only be safely transported under refrigeration, but they and each of them admit that a portion of the green fruit shipped from southern California to eastern points cannot during certain seasons of the year be safely transported without refrigeration. These defendants further deny that said California Fruit Express, said Santa Fe Refrigerator Line and said Armour & Co., or either of them, is authorized or permitted, under the terms of the agreement referred to, to establish any refrigerator tariff, but these defendants admit that said private-car lines are permitted to refrigerate such cars of fruit as require refrigeration, for which they are permitted to charge and receive reasonable compensation. These defendants, upon information and belief, deny that such charges for refrigeration are largely in excess of the actual cost of refrigeration or that the same yield a large profit to the said private-car lines, and further deny, upon information and belief, that such charges made for such refrigeration are excessive or exorbitant. These defendants deny that such charges for refrigeration are for a service that said railway companies are required by law to perform at the reasonable cost thereof, and upon information and belief deny that said railroad companies are required by law to perform the service of refrigeration at its reasonable cost, or at all; and these defendants deny that they have made a charge in their published tariffs sufficient to cover the cost of such refrigeration. These defendants say that it is well understood that the tariff charges made by them for transportation do not include and are not intended to include any service for furnishing ice or refrigeration. These defendants further say that they have not undertaken and do not undertake, either by their tariffs or their contracts for transportation, to furnish ice or refrigeration for such cars.

X. These defendants have not sufficient knowledge to en-
63 able them, or either of them, to admit or deny the allegations contained in the tenth paragraph of said complaint, that said Edwin T. Earl is the owner of all or nearly all the stock of the Earl Fruit Company or Continental Fruit Express, or has used or now uses such corporations for the purpose of carrying on the private business and interests of said Edwin T. Earl. These defendants deny, upon their information and belief, that said Edwin T. Earl is now and at all the times mentioned in said petition, or is now or

at all the times mentioned in said petition, was a fruit shipper in competition with the complainant or shippers of said fruit from southern California to eastern markets. These defendants admit, however, that said Earl Fruit Company, a corporation as alleged, is now and at the times mentioned in said petition was a fruit shipper in competition with the complainant and other shippers of said fruit from southern California to eastern markets. These defendants have no knowledge sufficient to enable them to admit or deny the allegations, or any of them, that said Edwin T. Earl has the exclusive control and management of the affairs of the Continental Fruit Express. These defendants deny that said Edwin T. Earl is permitted by them or any of them to have access to cars while in service upon their lines of railroad, or that he is permitted to have knowledge of the movements or destination of all shipments or any shipments made by complainant or other shippers other than the knowledge that is afforded to shippers in general, no preference whatever being shown to the said Edwin T. Earl in this or in any other respect.

XI. These defendants admit that complainant has demanded of them that it should be furnished refrigerator cars for the shipment and carriage of oranges and lemons and other fruits, but these defendants deny that they or either of them have at any time refused or that they or either of them do now refuse to furnish or
64 supply such cars to the complainant; and defendants further deny that they have at all times or at all compelled complainant or other shippers to make its or their shipments of fruit in such private cars, except as hereinbefore stated. These defendants admit that for some time past they have not had and do not now have in their service any other refrigerator cars than those furnished to them by said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co.; but defendants allege that while said cars are in the service of transporting such fruit they are under the entire control and management of the defendants except as to refrigeration thereof, and that the same were and are now the best-equipped cars obtainable for such service, and the same are amply sufficient for such service. Defendants deny that complainant is compelled to pay, in addition to the regularly established tariff rate, unreasonable or exorbitant refrigeration charges.

XII. These defendants deny that the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company, acting for itself and on behalf of said defendants, The Santa Fe Pacific Railroad Company and The Southern California Railway Company, or acting on its own behalf or on behalf of its codefendants, The Santa Fe Pacific Railroad Company and The Southern California Railway Company, or either of them, did, prior to the last day of January, 1898, or at any time, enter into a contract, agreement, or combination to pool and divide or to pool or divide between the said Southern Pacific Company and these defendants, or either of them, the aggregate or net proceeds of all or any business done by said defendants,

or either of them, originating in southern California or elsewhere. They deny that any such contract, agreement, or combination is now in force or is acted upon or treated as valid by all or any of said defendants; but these defendants admit that at all the times
65 mentioned in said petition said Southern Pacific Company and these defendants were and are now competing railroads opreated and doing business in the same territory, and they aver that the most active and energetic competition between said competing lines still exists.

XIII. These defendants admit that for many years prior to the 1st day of January, 1898, shippers of oranges, lemons, and other fruits from southern California to eastern points were accorded by these defendants and exercised the privilege of selecting from the various connecting lines parties to the published tariffs the ones over which their shipments would be carried to destination, but defendants say that they have no knowledge or information sufficient to enable them to answer as to whether the route selected by such shipper would secure the most rapid transit and the safest and promptest delivery at destination and the best service, such as ventilation of cars in transit and the roundhousing of the same in cold weather, as alleged in the fourteenth paragraph of said petition. Defendants deny, however, that such shippers ever had, or that they do now have, the right to select from the various connecting lines parties to the published tariffs the ones over which their shipments should be carried; but allege that while such privilege has been accorded to such shippers at times prior to the 1st day of January, 1900, that at all times defendants have reserved and do now reserve and claim the right to route all shipments tendered to any of them as an initial carrier. These defendants by reference thereto adopt and make a part hereof as fully and completely as though herein set out in full each and every allegation, averment, matter and thing contained in the fifteenth paragraph of the answer of the defendant The Southern Pacific Company, save and except only that in the place and instead of the words "defendant Southern Pacific Company" contained in the portions of the answer of the Southern Pacific Company hereby adopted, the words "these
66 defendants" are to be substituted so as to make such allegation the allegation of these defendants.

XIV. These defendants deny that by the establishment of the rule in regard to the routing of shipments the initial carrier reserved to itself the absolute and unqualified right to route beyond its own terminals, but, as above stated, defendants allege that said right to route has always been reserved and has been and is now vested by law in the initial carrier. Defendants further deny that said rule was established for any of the purposes set forth in the fourteenth paragraph of said petition, and deny that said rule was not adopted by these defendants in good faith, and deny upon information and belief that the enforcement of such rule has resulted in great or any detriment or irreparable or any injury or damage to the

complainant. These defendants deny that they have since the 1st day of January, 1900, in many instances taken and routed the shipments of complainant over longer or more dangerous routes than those selected and requested to be adopted by the complainant at the time of making the shipment. These defendants say that as long as they continue to quote through rates and are responsible for such rates, it is their intention to maintain the right of the initial carrier to route the goods, that the rule was adopted in good faith and not in the interest of the refrigerator car lines, nor on account of any alleged combination, but solely and wholly that the integrity of published rates might be preserved.

XV. These defendants deny the other matters and things set forth in complainant's petition not herein specifically admitted.

Wherefore these defendants pray that the said petition and complaint may be dismissed.

E. D. KENNA,
C. N. STERRY,
ROBERT DUNLAP,

67 Attorneys for the Southern California Railway Company, Santa Fe Pacific Railroad Company, and the Atchison, Topeka and Santa Fe Railway Company.

STATE OF ILLINOIS, }
County of Cook. }

Paul Morton, of lawful age, being first duly sworn, on oath deposes and says that he is the second vice-president of the Atchison, Topeka and Santa Fe Railway Company, also of the Southern California Railway Company, and also of the Santa Fe Pacific Railroad Company, and has general charge of the traffic matters of the said companies, respectively; that he has read the foregoing answer, and that the statements therein contained are true, as he verily believes.

PAUL MORTON.

Sworn to before me and subscribed in my presence this 22d day of March, 1900.

[SEAL.]

A. E. SPEIRS,
Notary Public.

My commission expires June 13, 1903.

68 EXHIBIT F.

69 Before the Interstate Commerce Commission of the United States.

SOUTHERN CALIFORNIA FRUIT EXCHANGE, a Corporation, Complainant,
v.
SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA Fe Railway Company, Santa Fe Pacific Railway Company, and Southern California Railway Company, Corporations, Defendants.

Answer of Defendant Southern Pacific Company.

Now comes The Southern Pacific Company, one of the defendants named in the petition herein, and, without waiving any objections it may have to said petition, makes its answer thereto as follows:

I. That as to the allegations of paragraph I of said petition concerning the existence of the complainant as a corporation, and its corporate purposes, and its transactions as a corporation, the Southern Pacific Company has no information or belief sufficient to enable it to answer said allegation- of paragraph I, or any of them, and it therefore, for want of such information and belief, denies each and all of said allegations.

II. That as to the allegations of paragraph II of said petition, the defendant Southern Pacific Company leaves the complainant to make such proof as it may be advised.

III. Said defendant Southern Pacific Company admits as true the allegations of paragraph III of said petition.

IV. Said defendant The Southern Pacific Company leaves the complainant to make such proof concerning the allegations of paragraph IV of said petition as it may be advised.

70 V. Said defendant, The Southern Pacific Company, denies that the oranges, lemons, and other fruits mentioned in paragraph V of said petition require rapid transit in their transportation to eastern markets. On the contrary, said defendant alleges that rapid transit in the transportation of said fruits is not necessary when refrigerator cars are used, and that said fruits can, at certain seasons of the year, be shipped in ventilated cars, and in other cars than refrigerator cars, and that a large part of said fruit is shipped from southern California to eastern markets without refrigeration, although refrigerator cars and ventilated cars and cars combining refrigerator and ventilating devices are used in such transportation.

Said defendant further denies that it is or ever has been the duty of the defendants as common carriers, or any of them, to furnish, maintain, or supply properly equipped or other refrigerator cars for the carriage or transportation of oranges, lemons, or other fruits grown in southern California.

VI. Said defendant, The Southern Pacific Company, denies that in disregard of its duty to furnish properly equipped refrigerator cars for the carriage or transportation of oranges, lemons, and other fruits grown in southern California, or for the purpose of giving to the Continental Fruit Express and one Edwin T. Earl and the Earl Fruit Company, or either or any of them, an undue or other preference over complainant or other shippers, or for any purpose, said railroad companies named therein, or any of them, and particularly this defendant, did at any time enter into any contract or contracts, agreement or agreements, with the said Continental Fruit Express to operate for the term of five years, or for any other time, jointly or otherwise, with the said Continental Fruit Express, over any lines of railroad, certain or any refrigerator cars for the benefit of
71 said Continental Fruit Express; but this defendant alleges that in order to provide over its lines the best and safest methods and appliances for the transportation of oranges, lemons and other fruits grown in southern California, it did, on or about November 1, 1897, make contract with the Continental Fruit Express, by way of lease, for the use and control on the lines of railroad operated by this defendant, of certain refrigerator and ventilator cars, 500 in number (increased by supplemental contract to 850 cars), which contract of lease by its terms is to be and remain in force and effect for the term of five years from and after its date.

VII. Said defendant, The Southern Pacific Company, denies that in disregard of its duty to furnish properly equipped refrigerator cars for the carriage or transportation of oranges, lemons, and other fruits grown in southern California, or at all, or for the purpose mentioned in paragraph VII of said petition, or for any purpose, the railroad companies named in said paragraph VII, or any of them, and particularly this defendant, did, on or about November 1, 1897, or at any other time, enter into any contract or contracts, agreement or agreements with the Santa Fe Refrigerator Line, or Armour & Co., for the term of five years, or any term, to operate jointly, or otherwise, with said Santa Fe Refrigerator Line, or said Armour & Co., over any lines of railroad, for the benefit or otherwise of said Santa Fe Refrigerator Line, or said Armour & Co., certain or any refrigerator cars; but said defendant alleges the fact to be that in order to provide over its lines the best and safest methods and appliances for the transportation of oranges, lemons, and other fruits grown in southern California, it did, on or about November 1, 1897, make contracts with the Santa Fe Refrigerator Line, and with Armour & Co., by way of lease, for the use and control while on the lines of railroad operated by this defendant, of certain refrigerator and ventilator cars, 1,000 in number (increased by supple-
72 mental contract with Armour & Co. to 1,650), which contracts of lease by their terms are to be and remain in force and effect for the term of five years from and after their dates, respectively.

VIII. Said defendant, The Southern Pacific Company, denies that

severally or in combination with any defendant herein it has ever at any time neglected or refused to furnish to complainant or other shippers refrigerator cars for the carriage or transportation of oranges or other fruits, or that it has at any time compelled or does now compel the complainant, or any other shipper, to use refrigerator cars furnished by said Continental Fruit Express, Santa Fe Refrigerator Line, or said Armour & Co., designated in said petition as private car lines. On the contrary, this defendant alleges that it has at all times furnished, or offered to furnish, to complainant and all other shippers in southern California not only suitable cars for the transportation of oranges, lemons, and other fruits, but the best cars that could be obtained for such transportation; and while this defendant admits that it has not for some time past, and has not now in service on its lines any other refrigerator cars than those leased as aforesaid from the said Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co., yet this defendant alleges that said cars are the best equipped cars obtainable for the transportation of oranges, lemons, and other fruits, and furnish the best service to shippers of such fruit that has been devised.

IX. Said defendant, The Southern Pacific Company, denies that said fruits shipped from southern California to eastern points can only be safely transported under refrigeration, but admits that at times of excessive heat such fruit can be more safely transported under refrigeration by ice than otherwise, and alleges that a large part of said fruit is shipped from southern California to eastern markets without refrigeration.

73 Said defendant, The Southern Pacific Company, alleges that under the terms of its contracts of lease of the refrigerator and ventilator cars aforesaid with said Continental Fruit Express, said Santa Fe Refrigerator Line, and said Armour & Co., said lessors, and each of them, undertake to provide at different points along the lines of railroad the ice necessary for the refrigeration in said cars leased from each of the said lessors, respectively, and to ice said cars when and as required, for which service said lessors are authorized and permitted, under the terms of said contracts of lease, respectively, to charge a reasonable compensation therefor, which is to be paid by the shipper in addition to the charge or tariff for the transportation by the defendant of said fruit.

Said defendant, The Southern Pacific Company, according to its information and belief, denies that said refrigeration tariff or charge, so made by said lessors for the icing and refrigeration of said cars, is largely, or at all, in excess of the actual cost of refrigeration, or that the same yields a large profit, or any unreasonable profit, to said lessors.

Said defendant, The Southern Pacific Company, according to its information and belief, denies that the charges made for such refrigeration are excessive or exorbitant, or anything more than a reasonable charge for said refrigeration.

Said defendant, The Southern Pacific Company, denies that said

charges for refrigeration are made for a service that this defendant or said railroad companies are required by law to perform at the reasonable cost thereof as a necessary part of the service, or at all, or that said railroad companies, including this defendant, are required by law, or at all, to give such attention to said fruits while in transit.

Said defendant, The Southern Pacific Company, denies that it has made a sufficient charge in its published tariff to cover the
74 cost of such refrigeration. On the contrary, said defendant alleges that the freight rate for such transportation, which it receives according to its published tariff, is reasonable and just to the shipper, and does not afford to this defendant any greater return for the service of transportation performed by it independently of refrigeration than it is entitled to receive.

X. That as to the allegation in paragraph X of said petition, that Edwin T. Earl was at the time mentioned in the petition and is now the owner of all or nearly all of the stock of the Earl Fruit Company, a corporation, and of said Continental Fruit Express, a corporation, and has used and now uses said corporations for the purpose of carrying on his private business and interest, said defendant Southern Pacific Company has not sufficient information and belief to enable it to answer said allegations or any of them. Said defendant therefore denies said allegations and each and every part thereof.

Said defendant, the Southern Pacific Company, denies that said Edwin T. Earl, in operating said Continental Fruit Express Line, or by reason of his connection therewith, is permitted by this defendant to have access to the cars, or to have knowledge of the movements and destination of all or any shipments made by complainant or other shippers, or that said Edwin T. Earl is thereby afforded, or is afforded at all, the opportunity to know to what market the complainant and other shippers are consigning their fruits, or to take advantage of such knowledge for his personal benefit to the great or any detriment or irreparable or other injury of complainant or any other shipper of fruit.

XI. Said defendant, The Southern Pacific Company, denies that at any time it has repeatedly, or at all, refused to grant to the complainant herein the same or similar privileges to those which
75 are or were at any time given or granted by it to said Continental Fruit Express, said Santa Fe Refrigerator Line, or said Armour & Co.

Said defendant further denies that the complainant has at any time made a request of or demand upon this defendant to furnish or have operated for complainant's benefit, or for the transportation of the products handled by it, suitable or other refrigerator cars to be operated under like terms to those accorded by this defendant to said Continentel Fruit Express, said Santa Fe Refrigerator Line, and said Armour & Co., respectively. And said defendant further denies that it has at any time denied or refused to comply with complain-

ant's said demands, or has refused, or still refuses, to permit complainant to exercise any of the privileges accorded to or exercised by said Continental Fruit Express, said Santa Fe Refrigerator Line, or said Armour & Co.

XII. Said defendant Southern Pacific Company denies that it has at any time refused to furnish to the complainant for the carriage of its oranges, lemons, or other fruits proper refrigerator cars for the shipment or carriage thereof; and denies that it has at any time compelled or does now compel the complainant to make its shipments of said fruits in the cars of said private car lines, or in any other cars other than those which it has leased from the said lessors above named, or that it has required the complainant to pay any unreasonable or exorbitant refrigerator charges mentioned in said petition, or otherwise. And in this behalf said defendant alleges that during certain seasons of the year refrigeration is unnecessary for fruits transported in such cars, and during such season said cars are used in all respects as ordinary ventilated cars, and no charge whatever is made for their use over and above the ordinary legal tariff for the transportation of freight thereon. That at other seasons refrigeration is necessary for the proper care and
76 *and* preservation of the fruit transported in said cars, and such refrigeration can only be done by persons, firms, or agencies stationed at proper points upon the railroads over which said cars are transported, and having the necessary appliances therefor. That such refrigeration involves the exercise of special skill and judgment, and can not be undertaken by railroad companies in addition to their ordinary duties of transportation. That each of the lessors of said refrigerator cars as aforesaid has a proper equipment of materials for refrigeration in charge of competent men at such places upon the said railroad as they can be made most available, and perform the necessary service of refrigeration, making, as this defendant is informed and believes, a reasonable charge therefor. Neither this defendant nor any of the railroad companies named in said petition have any interest whatever in the charges collected by said lessors, or any of them, for refrigeration, and whatever amount is collected therefor by said railroad companies is merely so collected as an accommodation to said lessors, and is paid over to them without diminution or reduction.

And this defendant further alleges that the refrigerator cars leased to it as aforesaid by the Continental Fruit Express, Santa Fe Refrigerator Line, and Armour & Co. are sufficient for all the purposes of its business and that it could not utilize any more of such cars were the same to be offered to it; that said lessors of said cars are not shippers of fruit, and that all the profit or emolument they receive from said cars are the rentals paid by this defendant and other railroad companies for the use of the same and the same received for services rendered in refrigeration, as aforesaid.

This defendant further alleges that in consequence of the movement of fruit in large quantities during a limited season of the year

it is absolutely essential that a supply of refrigerator cars
77 should be available to move such fruit, and by reason of its contracts and agreements with said car owners, as aforesaid, this defendant has been able to supply its patrons with sufficient cars for said service.

And this defendant alleges that it has, by the means aforesaid, at all times been able to and has supplied complainant and all other shippers of fruit over its said lines with proper refrigerator cars for the shipment and carriage thereof.

XIII. Said defendant, The Southern Pacific Company, denies that it and said Atchison, Topeka and Santa Fe Railway Company, acting for itself or on behalf of said defendants, Santa Fe Pacific Railway Company and Southern California Railway Company, did at any time enter into any contract, agreement, or combination to pool or divide between said defendant Southern Pacific Company, said defendants composing the Santa Fe system, the aggregate or net, or any proceeds of the earnings of all or any business done by any of said defendants originating in southern California or elsewhere, or that said or any such contract, agreement, or combination is now or was ever in force, or is now or was ever acted upon or treated as valid by all or any of said defendants. And said defendant admits that at all times in said petition mentioned it and the defendants composing the Santa Fe system have operated over and are now operating competing railroads in the same territory.

XIV. Said defendant, The Southern Pacific Company, denies that for many years prior to January 1, 1900, the complainant or other shippers of oranges, lemons, or other fruits from southern California to eastern markets had been habitually accorded by said defendant or had habitually exercised the right to select from the various connecting lines, parties to the published tariffs, the ones over which its shipments should be carried to destination, or that such
78 routing by said complainant or other shippers was necessary to secure the most rapid transit, or the safest or promptest delivery at destination, or the best or necessary service, such as ventilation of the cars in transit or the roundhousing of the same in cold weather, or any service connected with said transportation. But this defendant admits, that for some time previous to January 1, 1900, it had not always exercised the right (always expressly reserved by it concerning all goods received by it for transportation over connecting lines) to determine the routes or connecting lines over which it would forward such goods to destination.

XV. Said defendant, The Southern Pacific Company, denies that for the purposes mentioned in paragraph XV of said petition it established a rule whereby after the 1st day of January, 1900, the initial carrier reserved to itself the absolute and unqualified right of routing beyond its own terminal all shipments of citrus fruits in carload lots; but said defendant admits that it had at all times since January 1, 1900, exercised its legal right (always reserved, as above stated) to select and determine the route or connecting line or lines over which

it would forward goods received by it for shipment to points of destination beyond its own lines where it issues through bills of lading guaranteeing the through rate of transportation.

Said defendant Southern Pacific Company denies that said right of routing was not exercised by it in good faith, or that its action in exercising such right of routing and denying to complainant such alleged right was arbitrarily adopted for the purpose of making effective the agreement with said private car lines and said pooling agreement alleged in said petition; and said defendant denies that the enforcement of its right of routing, as above stated, has resulted in great or any detriment or irreparable or any injury or damage to complainant, and said defendant denies that it has since January 1, 1900, in many in-
79 stances, or at all, taken or routed shipments of complainant over much longer or more dangerous routes than those selected or requested to be adopted by the complainant at the time of making said shipments, or at any time. On the contrary, this defendant alleges that the routes selected by it have been generally those which were most favorable to the prompt and safe movement of the goods transported, and that such routing by this defendant since January 1, 1900, has been quite as favorable, if not more favorable, to the interest of shippers than the routes formerly selected and used by the shippers themselves.

And in this behalf said defendant, The Southern Pacific Company, alleges that it has since January 1, 1900, exercised, and is now exercising, its lawful rights of routing over connecting lines as aforesaid for the purpose of maintaining lawful rates and preventing violations of the second and third sections of the interstate-commerce law; and this defendant alleges that in exercising its right of routing shipments over connecting lines as aforesaid it has always consulted the interest of shippers and followed their advice and suggestions in all respects where it could be done without defeating its purpose to enforce lawful rates for transportation, and to prevent violations of the law as aforesaid.

Wherefore this defendant prays that the petition in this proceeding be dismissed.

SOUTHERN PACIFIC COMPANY,
By WM. F. HERRIN, Its Chief Counsel.

STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

William Sproule, being duly sworn, says that he is an officer, to-wit, the freight traffic manager, of The Southern Pacific Company, one of the defendants in this proceeding, and that the fore-
80 going answer is true, as he verily believes.

WM. SPROULE.

Subscribed and sworn to before me this 28th day of March, 1900.

JUDSON C. CLEMENTS,
Interstate Commerce Commissioner.

81 EXHIBIT G.

82 THE CONSOLIDATED FORWARDING COMPANY
v.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company. (No. 575.)

THE SOUTHERN CALIFORNIA FRUIT EXCHANGE
v.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company. (No. 576.)

The Continental Fruit Express Company and Armour & Company, Interveners.

Decided April 19, 1902.

1. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use.

2. Under section 6 of the act two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier where the participating carriers establish joint tariffs of rates
83 or fares or charges for such continuous line or route; and in respect of both classes of lines or routes the provision is uniform that established rates shall not be increased except after ten days' notice nor reduced except after three days' notice.

3. In the matter of rates for these classes of lines or routes the provisions of the law differ in no respect except one, and that
84 is merely that the commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous lines or routes, while as to the other class such requirement is specified in the law itself. Such exception does not go to the form, substance, maintenance or application of the rates in any degree whatsoever; and the commission has, by order duly made March 23, 1889, prescribed that carriers by such continuous lines or routes shall publish their joint rates in the same manner as separate or individual roads are required by law to do.

4. Under the practice of defendants as initial carriers in joint continuous routes of reserving to themselves exclusive control of the routing and denying to shippers any choice or control in a selection

as between different established routes, a route or tariff may be available to one shipper but not to another, and open one minute to a shipper but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shippers' business among one another from time to time or for any reason whatsoever. This practice of defendants whereby shippers are denied the use of their transportation facilities by established routes is in violation of the statute, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage and gives to the carriers undue and unreasonable preference and advantage.

5. Carriers are left by the law to procure equipment for their business by lease as well as otherwise, and they are not pro-
85 hibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one.

6. The questions whether defendants pool their citrus fruit traffic or divide the earnings therefrom, whether the blanket rate of $1.25 per 100 pounds upon oranges and other citrus fruits from southern California to points on and east of the Missouri river, and the minimum carload weight of 26,000 pounds, are unjust or unreasonable, and whether the statute applies to the charges for refrigeration, and if so, whether such charges are unjust or unreasonable, are retained by the commission for further hearing and investigation.

Hunsaker & Britt and Graves, O'Melveny & Shanklin, for complainants.

Wm. F. Herrin and R. S. Lovett for Southern Pacific Co.

E. D. Kenna, C. N. Sterry, Robert Dunlap and H. J. Stevens for the other defendants.

G. M. Lambertson and Guy C. Earl for the Continental Fruit Express.

A. R. Urion, Frank Hagerman and L. C. Krauthoff for Armour & Company.

86 Report and Opinion of the Commission.

CLEMENTS, Commissioner:

In these cases, which were heard together, the complaints are substantially the same. The complaints allege, in substance, as follows:

1. That defendants are common carriers subject to the act to regulate commerce.

2. That defendants' charge of $1.25 per 100 pounds for transporting oranges and lemons from southern California points to all eastern destinations beyond the State of Colorado is excessive and unreasonable.

3. That the charges collected by defendants for icing refrigerator cars used in transporting oranges and lemons are excessive and unreasonable, and that these charges are paid over to the owners of such cars with which defendants have contracts, and are made for a service which the defendants are required by law to perform at a reasonable cost as a part of the necessary transportation service.

4. That one of the car lines with which defendants have contracts is managed or controlled by Edwin T. Earl, who also manages and controls what is known as the Earl Fruit Company, a shipper of oranges and lemons and a competitor of the complainants, and that in the management of such car line over defendants' roads the said Earl obtains knowledge of shipments by complainants and
87 others which results in giving to him and the Earl Fruit Company an unlawful preference and subjects complainants to wrongful disadvantage.

5. That The Southern Pacific Company and the other defendants, composing what is known as the "Santa Fe system," have unlawfully agreed to pool their traffic in oranges, lemons and other citrus fruits which originate in southern California, and divide the net proceeds therefrom.

6. That prior to January 1, 1900, complainants exercised, without objection on the part of the defendants, their right to select the routes over which their shipments should be carried to eastern destinations, but upon that date the defendants unlawfully established, and have since continued to enforce, a rule whereby the initial
88 carrier reserves to itself the routing of all shipments of citrus fruits destined beyond its own terminals. That such rule was adopted for the purpose of making effective the contract agreements with the car lines and for enforcing the pooling agreement. That the enforcement of such rule has resulted in irreparable injury to complainants.

7. That defendants have wrongfully increased the minimum carload weights for oranges and lemons from 24,000 to 26,000 pounds, and that this has resulted in overloading to such extent as to injure the freight.

In their answers the defendants call for proof as to the existence and business of the complainants; admit that they are common carriers subject to the act to regulate commerce, and deny each of the violations of law alleged in the complaints. At the hearing the Continental Fruit Express Company and Armour & Company were allowed to intervene on behalf of the defendants.

The facts deemed material to the proper disposition of the cases are as follows:

Facts.

1. Both complainants are corporations organized under the laws of California. The Consolidated Forwarding Company, one
89 of the complainants, was organized in November, 1899, for the purpose of forwarding oranges and lemons from Califor-

nia to the various markets of consumption, and its principal place of business is Riverside, Cal. The other complainant, The Southern California Fruit Exchange, was organized in 1896 for the purpose of buying, marketing and selling citrus fruits. The complainants also act as the agent of numerous fruit growers and smaller fruit exchanges located in southern California.

2. The defendants, The Southern California Railway Company, Santa Fe Pacific Railway Company and Atchison, Topeka & Santa Fe Railway Company, are parts of the Atchison, Topeka & Santa Fe Railway system, commonly known as and hereinafter called the "Santa Fe system," which operates a line from Los Angeles and other points in southern California to Chicago in the State of Illinois. The defendant, The Southern Pacific Company, operates a line of railway from Los Angeles, Cal., via El Paso, Tex., to New
90 Orleans, La., and from Los Angeles via Sacramento, Cal., to Ogden, Utah. At the terminals mentioned and at numerous junction points upon their lines the defendant systems connect with other carriers and form through connecting routes for the transportation of oranges and lemons and other citrus fruits from all shipping points in southern California to practically all consuming markets in the United States. For all shipments of these commodities the defendant railway lines or systems are the receivers or initial carriers of the freight.

3. The defendant carriers have in effect a common tariff on citrus fruits from southern California shipping points to the Missouri river and points east thereof. This joint tariff fixes a single or blanket rate of $1.25 per 100 pounds to practically all points on and east of the Missouri river, and names 183 participating roads, which are classified in the tariff as western roads, New England roads and roads in Trunk Line and Central Freight Association territories. Thirty-one carriers in southeastern common-point territory
91 are also named with the following note: "For application of rates to southeastern common points see page 6 of east bound tariff, No. 3–6." This tariff prescribes a minimum car load weight of 26,000 pounds, which minimum weight has been in force under all tariffs applying on this class of freight since November 15, 1899. Prior to that date the minimum carload weight was at different times 24,000 pounds and 20,000 pounds.

The tariff prescribes the following general rules of shipment at the rates specified above:

"Oranges, lemons and grape fruit, in packages, or in cars having fixed or transient crates for same, O. R. weather, decay, shortage and delay, prepaid or guaranteed, at estimated weights shown below, in carloads, minimum weight 26,000 pounds."

The estimated weights fixed by the tariff are: Oranges 72 pounds per box; lemons 84 pounds per box; grape fruit, 68 pounds per box; when in standard size boxes, namely, for oranges and grape fruit 12 x 12 x 26 inches, and for lemons 11 x 14½ x 27 inches, outside measurement. When oranges and grape fruit are packed in the car

the cubic space allowed for the estimated weights is 11½ x 11½ x 24 inches. If boxes of irregular sizes are loaded, actual weight
92 as ascertained at point of shipment will be charged upon the entire carload. Citrus fruits are described in the tariff as "the fruits of trees, such as the orange, lemon, citron, etc., whose leaves do not fall in the autumn. The principal citrus fruits are oranges, lemons, limes, mandarines, tangarines, citrons and grape fruit."

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving the guarantee. In accordance with this rule, agents will not accept shipping orders or other documents, if routing instructions are shown thereon. Neither will agents accept verbal routing instructions."

This rule is followed by one in regard to diversion of the freight from the point or route as originally consigned, which first appeared in the tariff now in effect, and reads as follows:

"Initial carrier will route each car from point of origin to point of destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein."

The tariff also contains a note that "when initial carrier
93 makes notation on way bills giving connecting carriers specific instructions pertaining to the freight, all connecting lines following such instructions are protected by bond in the hands of initial carrier." Shippers are required to execute and file with the carrier a special or general bond of indemnity applying particularly in cases of diversion of the freight.

The tariff now in force became effective January 21, 1902. The rule reserving to the initial carriers the right to route the freight appears also in the tariff in effect on and after January 1, 1900, and which was in force when the complaints were filed. The tariff applying on this citrus fruit traffic is a joint tariff between the defendant initial carriers and the numerous other carriers therein named, and is filed with this commission pursuant to the requirements of section six of the act to regulate commerce in relation to joint tariffs over continuous lines or routes. By authority granted in that section of the act as amended March 2, 1889, the commission made order on March 23, 1889, requiring the publication of joint tariffs thereafter issued for ten days prior to the taking effect
94 of any advance and for three days prior to the taking effect of any reduction in the joint rate, and that order in respect to the publication of joint tariffs is still in force.

Although control of the routing was first reserved to the initial carriers in the tariff effective November 15, 1899, the testimony indicates that the rule was not made effective until January 1, 1900. Prior to January 1, 1900, shippers were permitted by the defendants to exercise the right to control the routing and to divert the freight from the destination point or route named in the billing. This right

to control and to divert shipments before they reached the billed destination is claimed by complainants as a legal right, the exercise of which is necessary to the proper and profitable marketing of these products. The shippers individually or through their freight exchanges are kept advised of the state of the market in eastern cities and they frequently find it of great advantage to have a car which has been billed to Chicago, for instance, stopped at Kansas City, St Louis or some other point or sent on farther east to Cincinnati or New York, where at the time the demand may be greater and the price higher than in Chicago. This practice of diverting car
95 load shipments from the original destination is common and is usually allowed by carriers throughout the country. The orange shippers protected the carriers from loss which might arise through diversion of the freight by giving an indemnity bond to the initial carrier, and it appears from a notice in the present tariff that this practice is still followed when diversions are permitted by the carrier. Numerous examples appear in the testimony and are used by complainants in their brief showing that to divert a car to some points or to specified territories the freight must be sent over particular routes, and that it is necessary to the proper carrying on of his business that the shipper should know and control the routing.

Some time in the fall of 1899 the defendant, The Southern California Railway Company, issued a circular stating that on and after January 1, 1900, it would reserve to itself the right of routing these citrus fruits, and on January 20, 1900, it issued a private circular to agents containing instructions how the shipments should be routed. The body of this circular to agents reads as follows:

96 Referring to circular letter No. 45 regarding forwarding of citrus fruit, effective January 1, 1900, you will route shipments of citrus fruit originating at your station in accordance with the instructions herein given.

1. Destinations and routes that you will use, and percentage of business that it is desired to send via different railroads is shown below. You will, in forwarding shipments, divide between connecting lines in accordance with the proportions shown in this sheet.

2. Shipments to any point reached by Santa Fe System lines must follow its track to destination.

3. Shipments to points not shown in this list that are local on any connecting line, give the Santa Fe system longest possible haul and make reasonable direct route.

4. Shipments to points beyond Santa Fe System lines reached by more than one railroad, and that is not shown in the list of destinations given herein, you will forward via the most direct route, having in view the long haul for the Santa Fe system.

97 5. Shipments via Colton or Los Angeles to an eastern destination via Southern Pacific line, you will bill care of Southern Pacific Company with no other routing, except specially instructed by this office; you may show on way-bill when necessary point ship

per desires car to pass through to reach certain markets in accordance with instructions in paragraph six. Agent of the Southern Pacific Company at Colton or Los Angeles, as case may be, will forward you immediately after billing, an abstract on the waybill showing routing through to destination. This is done that you may be able to show on the bill of lading, if so desired by shipper, routing through, or give this information in any other form to shipper.

6. Shippers will be allowed to make following notation on shipping order covering shipments of citrus fruit and carrier will, so far as consistent, comply—

98 "Would prefer this car to pass through ——" points that shipper may likely market the car to be shown in blank spaces but must in every instance be point reached by more than one railroad.

7. When a shipper asks for some particular delivery and you are satisfied that it is necessary to the business that it be given, and if the route is one authorized in this circular and will not shorten the Santa Fe System haul, you may route as the shipper desires so far as the delivering line is concerned. If any intermediate lines, you will use such of them as will best serve to divide the business in accordance with the proportion shown herein.

8. This circular is for the private information of the agent to whom it is sent, must be kept under lock and key and not to be shown to any outsiders or employee except such employees as have to use it in their station work, and representatives of the freight department and general officials of the Southern California railway. Agents will be held strictly accountable for the proper care of this circular.

99 Agents will distribute shipments in accordance with percentages shown in this column.

That part of the circular showing these percentages was not furnished at the hearing.

While under the terms of this circular certain diversions are permitted, the shippers contend that this provision is insufficient, because without knowing and controlling the routing the shipper is unable to locate the cars or to determine what car can be diverted most advantageously. Whether this circular has been canceled or superseded by another does not appear. If the shipper cannot either control or know the routing he is unquestionably prevented from diverting the freight as occasion may require, and if he cannot control the routing, but must accept such route as the carrier may choose, his business may be, and in the nature of things must often be, unjustly affected. One example would be that a particular delivery upon some line to the consignee may thereby be denied. It is not understood, however, that all diversions are denied. The

tariff shows that diverting the traffic from one destination to
100 another is permitted when the shipper can obtain the consent of the initial carrier, and the testimony is that while the initial carriers do not always route as requested by the shippers they generally do comply with such requests.

The defendants claim that the rule reserving to the initial carrier the right to route the traffic was necessary to enable them to secure a discontinuance of a practice of paying rebates which prevailed previous to the establishment of the rule, and which is referred to in another part of these findings. Just how the rule actually operates to prevent rebate payments by connecting lines or others is not disclosed. The situation warrants the inference, however, that these two initial carriers or systems, connecting with other carriers at various points, and they in turn connecting with numerous other carriers as shown by the tariff, are able by acting in concert, and routing as they see fit, to only send traffic over the roads of such carriers as fulfilled an agreement to refrain from making any rate concession to the shippers, and some influence of like character could doubtless be exerted by them upon the car lines which are also hereinafter referred to. This citrus fruit traffic is the only
101 kind of freight concerning which the defendant carriers insist upon designating or controlling the routing to eastern markets. That is the testimony, but defendants' general eastbound freight tariff bears upon its title page a notation that the routing is absolutely and unqualifiedly reserved to the initial carrier.

4. Some testimony was given in regard to the increase of the minimum carload weight from 24,000 to 26,000 pounds, and the claim of complainants that such increase was unjust. All but a small proportion of the ventilator-refrigerator cars used in carrying this traffic are 40-foot cars, and no difficulty is found in loading that quantity in these cars. Oranges are packed usually in standard boxes of the size specified above as prescribed in defendants' tariff. The number or oranges packed in a box ranges from 80 to 300, and sometimes more. The boxes stand on end in the cars and are loaded three tiers high, 362 boxes to the 40-foot car. The interior space of the 40-foot ventilator-refrigerator car now in general use is 32 x 8 x 8 feet, or 2,048 cubic feet. A box of oranges occupies about 2 cubic feet, and the full load of 362 boxes about 724 cubic feet.
102 While for shipping purposes a box of oranges is estimated to weigh 72 pounds, the actual weight is about 78 pounds. The actual weight carried upon the 26,000 minimum basis and estimated weights is about 28,236 pounds. With the 40-foot car in use, any damage to the fruit from overloading, or rather from putting too much of the fruit in a given space, is apparently obviated. Some of the testimony is to the effect that the smaller car can be used to greater advantage by the shipper in particular markets, but no great stress was laid upon this in the argument, and if it is important we should require more evidence upon the point than appears in the present record.

5. In October, 1897, the Southern Pacific Company entered into
ontract with certain private car owners to supply the Southern
acific with ventilator-refrigerator cars. The contracts went into
ffect November 1, 1897, and were to remain effective during five
ears from that date. These private car companies are the Conti-
ental Fruit Express, the Fruit Growers' Express and the Santa Fe
ruit & Refrigerator Line. About 90 per cent. of the stock of the
first named company is owned by Mr. E. T. Earl, its presi-
63 dent. Armour & Company, of Chicago, own the Fruit
Growers' Express. The ownership of the Santa Fe Fruit &
efrigerator Line is not clearly shown, though there is some testi-
ony to the effect that the cars of the third company were furnished
y the Santa Fe Pacific Railway Company.

These contracts call for a maximum equipment of 1,500 cars from
ach of the car-line companies. The Continental Fruit Express,
aving already furnished 1,000, agreed to furnish 500 more; the
ruit Growers' Express, having already furnished 700, agreed to
urnish 800 more; and the Santa Fe Fruit & Refrigerator Company,
aving already furnished 1,200, agreed to furnish 300 more. Under
hese contracts it was agreed that such cars should be open upon
qual terms to all applying shippers; that the Southern Pacific
hould operate them, but the car-line companies should ice and keep
hem in repair and make reasonable refrigerator charges; that the
outhern Pacific should pay for the use of such cars loaded with
itrus fruit, deciduous fruit, or vegetables, from southern California
points, three-fourths of one cent per car mile for the move-
104 ment over said railroad, but no mileage would be paid west
bound, except when loaded with freight requiring refrigera-
tion or ventilator-refrigerator cars for protection against heat or frost,
in which event the Southern Pacific should pay six-tenths of one
cent per car per mile. The Southern Pacific also guaranteed that
such cars should be in service to the reasonable limit of their utility.
While there is ground for inference that the same rate of mileage is
paid to the car-line companies by connecting carriers, there is no
specific testimony upon that point.

Substantially the same contracts were entered into with the South-
ern California Railway Company and the Santa Fe Pacific Railway
Company, parts of the Santa Fe system; but no contract between
those companies and the Santa Fe Fruit & Refrigerator Line appears
in the record. These contracts are much more favorable to
105 the carriers than those previously in force. The mileage
rate paid by the carriers was formerly three-fourths of a cent
in both directions.

The ventilator-refrigerator cars are improved 40-foot cars with
patent ventilating and refrigerating appliances to prevent injury to
the traffic from frost and heat. The refrigeration is done by means
of a tank at each end of the car. The tanks will hold 10,000 pounds
of ice. The only charge made to shippers for the use of these cars
is that which is imposed when refrigeration is required.

6. The following table shows the charges for refrigeration upon oranges and lemons and other citrus fruits and vegetables from southern California points to eastern destinations which were made by the Continental Fruit Express from 1892 to 1900, inclusive, during the season from March to December of each year.

106

Summer refrigerating charges per car from southern California points to—	1892–1893. 20,000 lbs. min.	1894. 24,000 lbs. min.	1895–1898. 24,000 lbs. min.	1899. 24,000 lbs. min.	1900. 26,000 lbs. min.
Denver, Leadville, Pueblo, Salt Lake	$75	$75	$60	$50	$50
Butte, Council Bluffs, Omaha, St. Joseph, Kansas City	75	75	60	60	60
Dallas, Fort Worth	75	75	75	60	60
Houston, San Antonio, Burlington, Des Moines, Sioux City	75	75	75	70	70
Chicago, St. Louis, Sioux Falls, Minneapolis	75	75	75	75	75
New Orleans	90	90	75	75	75
Evansville, Indianapolis, Fort Wayne, South Bend	90	90	90	80	80
Buffalo, Detroit, Cleveland, Cincinnati, Fargo, Memphis, Toronto, Wheeling	90	90	90	85	85
Albany, Atlanta, New York, Baltimore, Montreal, Philadelphia, Washington	90	90	90	90	90
Boston, Hartford, Providence, Portland, St. Johns, N. B.	90	90	90	95	95

107 The winter refrigerating charges of the same company in force from December to March of each year were, in 1892, 1893 and 1894, $25 less to Missouri River and intermediate points, and $30 less to points east of the Missouri river; in 1895 they were the same as the summer charges; in 1896, 1897 and 1898, they were $20 less to Missouri River and intermediate points, $25 less to Chicago, St. Louis, Minneapolis, St. Paul and Texas points, and $30 less to points east of Chicago and St. Louis; in 1899 and 1900 the winter charges applied from December 1 to March 15, and were $20 less than the summer charges. When the cars were under ventilation only up to Ogden, Albuquerque, El Paso and points east thereof a reduction of $15 per car from the above stated charges was made. Just what is meant by the word "points east thereof" in the schedule of the Continental Fruit Express is not explained, but it is inferred from the testimony of the president of the company that they mean icing points east of the places named, and that cars upon which that reduction in icing charge was made were iced at some point en route.

108 If this were not so, it is plain that the charge as reduced might apply upon cars which had not been refrigerated at all. These icing or refrigerating charges cover the use of special equipment, cost of the ice, labor, and supervision of cars in transit. The railway

employees attend to the ventilation. The winter charges are less because less ice is required and the cost of ice is lower in that season. The charges of the other car lines were and are the same as those of the Continental Fruit Express. When icing is desired by shipper, "icing requested" is noted upon the billing of the freight by the carriers' agent. These charges are not published in railroad tariffs or filed in any form with this commission. The refrigeration charges are collected by the railroad companies and turned over to the car-line companies. Prior to 1897 it appears that the Santa Fe system collected the refrigerator charges, but that on shipments via the Southern Pacific the collection was made by the car lines themselves.

Only about 20 per cent. of the total number of cars shipped in a season are refrigerated. The icing of cars begins in March or early April and continues throughout the remainder of the shipping season. Oranges and other citrus fruit moved under refrigera-
109 tion from southern California to eastern markets are routed via three gateways, Ogden, Utah, Albuquerque, N. M., and El Paso, Tex. The car-line companies have the icing done at a number of points along the different routes. The Continental Fruit Express Company ices its cars at the following points: Ogden route—Los Angeles, Sacramento, Truckee, Ogden and North Platte. Albuquerque route—San Bernardino or Los Angeles, the Needles, Albuquerque, Las Vegas and Argentine. El Paso route—Los Angeles or Colton, Tucson, El Paso, Fort Worth and Kansas City. Along any of the routes, if the cars are destined beyond Chicago, they are iced at Chicago; if destined as far East as the Atlantic seaboard they are iced at one or two points beyond Chicago. Artificial ice is used at some points and natural ice at others. At Ogden, North Platte and Omaha on the Union Pacific the ice is furnished and placed in the car tanks by the railroad, but at the expense of the car line. It does not appear that the Continental Fruit Express Company has any ice houses in use anywhere outside of California; that company contracts with either the railroads or the ice
110 companies to do the icing. This express company does, however, have employees at these icing stations whose business it is to look after the icing of the cars immediately upon their arrival, and make daily reports to the head office, including time of arrival and time of departure, and the amount of ice placed in the different cars. Such employees are paid according to the importance of the icing station and the volume of business they have to handle. Some are paid $60 per month and others as high as $125 per month. These men are kept in the employ of the car lines all the year. On account of the delay in the arrival of trains, ice is often kept on the icing platforms exposed to the weather for a considerable period before the trains arrive.

7. For seven or eight years prior to 1900 the shippers of citrus fruits from southern California to competitive points in the East received rebates ranging from $15 to $25 per car, which were paid in a great many cases by the car-line companies. The published re-

frigerator charges were exacted and subseqently the "allowance" was paid back to the shippers. The eastern connections of the
111 defendants also paid these rebates or a part of them through their representatives direct to the shippers. These eastern connections are also shown in some cases to have paid the car-line companies more than the actual car mileage charges, in order, as Mr. Earl, of the Continental Company testified, to help out the car line in paying the rebates.

The payment of these rebates was well known, and they were made generally to all shippers. Rebates were paid when the car was not refrigerated as well as when it was, though they were greater when refrigeration was used. The average rebate was $15 when not refrigerated and $25 when refrigerated. It appears that the eastern connections of the defendants were willing to pay these rebates, or their shares of them, in order to have the traffic routed over their lines. Mr. Naftzger, president of the Southern California Fruit Exchange, filed a statement showing rebates received by that complainant during the four years 1895, 1896, 1898, and 1899. The rebates for 1895 and 1896 were from the Overland Despatch. The reason why 1897 is omitted is because he claims to have had no data for that year. These rebates aggregate for those four years $37,165 from shipments under refrigeration and $137,326 from shipments
112 not refrigerated, making a total of $174,491. As the practice of paying these rebates was general, the shippers came to regard them as part of their legitimate returns from the orange business. The payment of these rebates was discontinued January 1, 1900, and there is no evidence that the practice has been resumed.

8. A part of the testimony is devoted to the question whether the carriers by making and carrying out the contract for cars with the Continental Fruit Express, of which Mr. E. T. Earl is shown by the evidence to be the president, do not afford an undue preference to the Earl Fruit Company, of which that gentleman is also president. The Continental Express being a car company, keeps informed of the position of its cars from day to day and has more or less knowledge of the shipments carried in them, and as Mr. Earl is president of that company and the Earl Fruit Company, a competing shipper with complainants and others, it is claimed that he is able to use the knowledge he acquires in the management of the express company to benefit his fruit company. Mr. Earl appears to be the only shipper of fruit from southern California who is also in the posi-
113 tion of operating or managing one of the car lines. Undoubtedly this tends to give him as a shipper an unfair advantage over other shippers. For this reason shippers have at various times objected to the use of the Continental cars, although the cars themselves are admitted to be in every way satisfactory. The evidence indicates, however, that the Southern Pacific at first refused to run the Earl cars and only consented to do so after these cars had come into quite general use through the demands of shippers.

Mr. Stubbs, the traffic manager of the Southern Pacific, in regard

to these cars said: "I desire to repeat what I have said before, that if three years ago, when I made the contract for this line, that it had been known that there was this objection to this car line that we certainly should not have taken Mr. Earl's cars." And again it is said by Mr. Stubbs: "I will state that when we get rid of this contract that is now in effect, that we will not make it again, and if we had known of the condition of affairs, it would not have been made."

Further on, in the same connection, Mr. Stubbs also said: "I say now that when this contract has expired that we will not
114 make a contract with any other shipper." Under the terms of the contract it will expire during the present year, and with its expiration the complaint will be satisfied in that respect, if it has not already been obviated by changes in the car-line management.

9. Oranges, lemons, and other citrus fruits in southern California are grown in localities reached by the Southern Pacific and Santa Fe systems in such volume as to produce naturally about equal proportions along each line. The complainants allege that these carriers pool the business and divide the net proceeds or revenue. This is denied by the defendants both in the answers and testimony submitted on their behalf.

It does appear, however, that these two systems endeavor to preserve the equal division of this traffic, and with both carriers acting together to secure that result one efficient means to such end would be the operation of their tariff rule reserving to themselves the routing of the freight to eastern destinations as they see fit.

The circumstances attending the execution of the car-line
115 contracts, such as being executed at the same time, the exclusion of all other car lines, the fact that the railroads have each year divided their demands for these cars between the three car lines in certain proportions, and that Armour & Company consented to the Continental Fruit Express increasing the number of its cars in the orange business in consideration of the Continental Company withdrawn from competition in the southern strawberry trade, are pointed out by complainants to indicate an unlawful agreement or understanding between the defendant railroad companies. It was admitted by Mr. Stubbs, the traffic manager of the Southern Pacific, at the hearing in Washington that the way the cars were apportioned between the car lines by the railroad company may be called a division, but he claimed that it was not an unlawful division. A letter of Mr. Stubbs put in as an exhibit to the testimony shows that Mr. Earl, president of the Continental Express, called upon the traffic manager of the Southern Pacific in December, 1899, and asked to be permitted to furnish more cars than the contract called for, but he was told that the additional cars were not then wanted. In July, however, the freight traffic manager of the Southern
116 Pacific told a representative of the Continental Express that the prospects were such that the Southern Pacific would probably require more cars, but that it would get them from the Fruit

Growers' Express. At a later date Mr. Robbins of the Fruit Growers' Express wrote the freight traffic manager saying: "I desire to suggest that it might be well for your company to take 250 more cars from the C. F. X. and the Santa Fe the same, provided always that the number of their cars used does not exceed the number of ours, either in your own or the Sante Fe service." This offer is stated to have been made "in the interest of harmony" at a "joint conference" of the representatives of the Southern Pacific, the Continental Fruit Express and the Fruit Growers' Express. It was arranged that the Southern Pacific would take and the Continental Fruit Express would supply an additional 350 cars, and that the Southern Pacific would take and the Fruit Growers' Express would supply an additional 150 cars.

The routing circular of January 20, 1900, extracts from which appear herein in connection with the finding as to the rule of
117 the carriers reserving to themselves the routing, shows that the orange shipments are forwarded by the initial carrier so as to give certain percentages of the traffic to connecting lines.

Some instances appear in the testimony in which cars offered for shipment by the Santa Fe were transferred over to the Southern Pacific. One car loaded at a station on the Santa Fe was a refrigerator car belonging to the Southern Pacific equipment. It was sent over the Southern Pacific against the shipper's protest, because it was claimed the car had been furnished by the Southern Pacific. Another shipper who packed his oranges at Covina, a station on the Southern Pacific not reached by the Santa Fe, having had some trouble with the Southern Pacific, hauled his freight by wagon seven or eight miles to the station on the Santa Fe. He requested the agent of the Santa Fe to ship it via the Santa Fe route East, but this the agent declined to do, and shipped it by way of the Southern Pacific, for the reason, it was claimed, that if the Santa Fe took the shipment it would be invading the territory of the Southern Pacific.

10. Shipments of oranges and other citrus fruits by rail from southern California to eastern destinations were not made to
118 any extent until about the year 1886. In that year only a few hundred cars were shipped. The total citrus fruit acreage is now about 50,000 acres. In 1890 about 5,000 carloads were shipped to the East, and in 1898 the shipments exceeded 15,000 cars. This fell to 10,350 cars in 1899, but in 1900 about 13,000 cars were sent East up to May 1, and the total crop for that year was estimated at 17,000 cars. In 1899 there were in the State of California, as shown by the tax books, 2,072,417 bearing orange trees and 1,222,319 orange trees in the first year's growth. The tree begins to bear about the fifth or sixth year, but does not come into full bearing until the eighth year and sometimes later. It is long-lived, and as it grows older the quality of the fruit is well maintained. From 70 to 90 trees are planted to the acre. The average price of nursery stock is about 40 cents per tree. Land adapted to orange culture sells without water right from $2.50 to $5. per acre. The water

right costs about $200 per acre, and 15 cents per inch of water used. Full-bearing and well-kept groves sell for from $1,000 to $1,800 per acre. The oranges are usually kept in the packing house for "curing" two or three days before shipment.

119 As before stated, the orange shipping season begins in November and ends in the following July or August, but the greater portion of the crop is marketed by about the first of April. The lemon crop in southern California constitutes a comparativly small part of the citrus fruit crop. It is estimated to be about 1/10 or 1/15 of the orange crop. About one-half of the shipments go to Chicago and intermediate points and the other half to Atlantic seaboard cities and destinations easterly of Chicago. It costs annually about $20 per acre to carry orange trees to the producing period. This includes irrigation, land cultivation, pruning and general attention. The labor upon a bearing grove costs about $30, fertilizers $20, and incidental expenses, including water and boxes, about $20, making a total of $70 per acre per annum. Three hundred boxes per acre is considered a fair yield. The cost for cultivation, picking, grading, packing, hauling, loading in cars, and selling, including commissions, is about 75 cents per box.

120 The average gross price received for oranges, all grades, free on board cars at point of shipment, during the season of 1899 was about $1.65 per box, and the average for that portion of the season from November 1, 1899, to March 31, 1900, is given in testimony at $1.47 per box. This would leave net to the grower, after deducting the 75 cents per box for expenses, 90 cents per box in 1899 and 72 cents per box in 1900. The price in the markets varies greatly according to the demand on different days and the grade and quality of the fruit. Carloads of oranges are frequently sold at auction in New York, Boston and other large markets. A car of oranges is stated to sell in the eastern markets for as high as $1,000 and sometimes as low as $300.

11. The blanket rate of $1.25 per 100 pounds amount- to 90 cents per box of oranges on an estimated weight of 72 pounds. The actual weight of a box of oranges is about 78 pounds. A carload of oranges containing 26,000 pounds, the minimum carload weight, gives the carriers a total revenue of $325 per car. Add to this the icing charge which is $60 to Kansas City, $75 to Chicago, and $90 to New York, and the total charge paid by the shippers amounts to $385 to Kansas City, $400 to Chicago and $415 to New York.

121 The following table shows the rates per ton per mile resulting from these charges from Redlands, Cal., to Kansas City, Chicago, and New York via the short lines, the Santa Fe and its connections:

From Redlands, Cal.,	Distance.	Rates per ton per mile from transportation charges only.	Rates per ton per mile, including icing and transportation charges.
To—	Miles.	Cents.	Cents.
Kansas City	1,758	1.422	1.684
Chicago	2,216	1.128	1.388
New York	3,129	.799	1.02

The average rate per ton per mile upon all freight for all roads in the United States during the year ending June 30, 1900, was .729 of a cent. While that figure embraces all of the different hauls, all kinds and classes of freight, and all rates upon all roads, the rates per ton per mile above given for this orange and other citrus fruit traffic are all upon very long hauls, that to New York being among the longest possible hauls in the United States, and the others
122 covering very long distances. If the ton-mile rates on general freight were not low for such extreme distances the resulting aggregate charge would be so high that the movement would be prohibited.

Another circumstance which bears upon the question of reasonableness is that citrus fruits are carried at the $1.25 rate only at owners' risk of damage from "weather, decay, shortage and delay," and the transportation charge must be prepaid or guaranteed by the shipper. All of those items which might on this traffic add materially to the carriers' risk are excepted by the carriers as a condition of carriage at the $1.25 rate.

The rate of $1.25 per 100 pounds has been in effect for practically the whole time since this citrus fruit business became the subject of any considerable movement by rail to eastern cities. It is as high to-day, when the shipments aggregate 15,000 or more cars annually, as it was when but a few hundred cars were moved during a shipping season, and when the rate as applied to that movement was low. The citrus fruit business in southern California has developed from a struggling enterprise, furnishing comparatively little traffic to the carrier, into a great and thriving industry from which
123 the carriers derive a large and growing traffic, steady both in daily offering and in annual volume, and which they can prepare to move during a shipping season ranging from November to August, with the bulk of the crop moving in the four months December to March, inclusive.

The cars formerly in use were smaller and the minimum weight permitted was as low as 20,000 pounds. Today the minimum is 26,000 pounds, three tons greater, giving an increase revenue of $75 per car. The amount paid by the carriers for the use of these cars has been practically reduced one-half. Formerly they paid ¾ of a cent a mile run in both directions; now the contracts limit this payment to the eastbound haul, with no compensation to the car lines

on the return trip unless articles requiring ventilation or refrigeration are loaded in them.

The testimony shows that rebates amounting generally to from $15 to $25 per car were paid during a period of at least seven or eight years prior to 1900. Some of this money was paid by the car lines and some of it by eastern connections of the initial
124 carriers, but however paid, these allowances or rebates must be regarded as deductions from the amount paid for transportation.

The service rendered by the carriers in transporting this traffic to eastern points is more expeditious than that provided for ordinary traffic, and is therefore more expensive, and improvements, not only in the equipment, but in time and general care of the traffic in transit, have been made. Formerly the time consumed in carrying to New York was as much as 25 days. This has been reduced to 15 and occasionally to 10 days. It is testified, however, and we so find, that the time used in transportation to eastern markets was greater in 1900 than it was in previous seasons. Undoubtedly this service is in a degree special, and the carriers can reasonably demand additional compensation for the extra cost which is thereby involved. On the other hand, the carriage of perishable freight from California to the East, not only of citrus fruits, but of deciduous fruits, such as apples, apricots, berries, cherries, currants, figs, plums, pomegranates, prunes, quinces, guavas, nectarines, olives, pears, peaches, grapes, and
125 of green vegetables, has grown to such an extent as to constitute a large share of the total traffic of the California lines, and the great increase in the volume of that business has enabled the carriers to reap much greater returns over operating expenses than was possible when the business was comparatively small. The rates charged by defendants on deciduous fruits and green vegetables, both of which kinds of freight are more perishable than oranges, lemons and other fruits of the citrus variety, are as follows:

Deciduous fruits, estimated weights per box or crate, 24,000 pounds minimum carload weight during season prior to July 1, and 26,000 pounds after July 1, owners' risk—$1.25 per 100 pounds to Colorado, Texas, Missouri River and Mississippi River points, Chicago, St. Paul and Minneapolis; $1.50 to New York, Philadelphia and Buffalo; $1.56 to Boston.

Green vegetables, 20,000 pounds minimum carload weight, owners' risk—90 cents per 100 pounds to Missouri River points and points east thereof up to and including Chicago and common points. Rates east of Chicago are not shown in tariffs. Green vegetables
126 are also carried by passenger train service at a rate of $2 per 100 pounds.

The tariff specifies that the rates named do not include the refrigerating charge, which is in addition to the tariff rate.

The fact that refrigeration is demanded by shippers for citrus fruits to a considerable extent, that is to say, for about 20 per cent. of the shipments, and that it is provided by the carriers, indicates

that such refrigeration is a recognized necessity. This icing service is furnished through the car lines in the same manner and to the same effect as these cars of special design are furnished through the car lines for the use of shippers of this traffic. The shippers have nothing to do with the car line in the shipment of their freights. Just as the car is furnished to the shipper upon request made to the carriers so is the icing done upon request made by the shipper to the carriers, and the charge for refrigeration is collected by the carrier along with the charge for hauling the freight.

These facts all tend strongly to support the claim of complainants that the rate of $1.25 is unreasonable and unjust, but the evidence taken as a whole is not deemed sufficiently full to warrant a positive finding to that effect, or if so to what extent. While there is considerable testimony upon the legality of the icing charge the showing as to that question is also deficient in some material respects.

127

Conclusions.

The defendant carriers are engaged in interstate commerce in respect to the traffic involved and are subject to the act to regulate commerce.

One important question presented in this case is whether the initial carriers can lawfully reserve to themselves the routing of shipments and deny the shipper his choice of established routes. Carriers are required to follow the instructions and directions given by shippers whenever practicable. United States Express Co. *v.* Kountze Bros. 8 Wall. 353, 19 L. Ed. 460; Elliott on Railroads, sec. 1490; Rea *v.* Mobile & Ohio R. Co. 7 I. C. C. Rep. 43. It is contended, however, by the defendant that joint through routes and rates are made by agreement between connecting carriers and those routes and rates are to be regarded as open to the public only upon such conditions as may be specified under the agreement; and it is pointed out that upon the traffic under consideration the through rate is guaranteed only upon condition that the routing shall be absolutely and unqualifiedly in the control of the initial carrier. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use. Every continuous rail line or route authorized by the sixth section of the act is of necessity constituted by two or more separate roads uniting by voluntary agreement and fixing joint through rates over the line thus formed. Such a route is in every instance as definite and specific a physical line as is either of the separate roads which constitute it. The formation of through routes is not compulsory, but when established and so long as they exist, the obligations, restraints and regulations of the law attach to them in all respects as fully as to a line composed of a single road. By the provisions of the sixth section of the act, two

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kinds or classes of routes are recognized and provided for.
129 The first is that of a single individual or separate road, which is required to print, keep open to inspection at stations along its line, and file with the commission such rates of fares and charges for transportation as it may establish. The other is a continuous line or route operated by more than one carrier where the several carriers operating such a line or route establish joint tariffs of rates or fares or charges for such continuous line or route. In respect of both classes of these lines or routes the provision is uniform, that established rates shall not be increased except after ten days' notice, or reduced except after three days' notice, as in said section specified. There is no respect in which the provisions of the law differ in the matter of the rates for these classes of routes respectively except one, and that is merely that the commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous or through route, while as to the other class the law itself fixes this. This exception does not go to the form, substance, maintenance or application of the rates in any degree or respect whatsoever. The commission in
130 the performance of its duty under the authority referred to, did on the 23d day of March, 1889, by order duly made, prescribe that carriers by such through or continuous routes should publish their joint rates in the same manner as separate or individual roads are required by law to do. If as matter of right the initial carriers parties to the joint continuous routes, *which* with other carriers they have formed, may control the routing and deny the shipper any choice or control in a selection as between the different routes thus formed, then a route or tariff may be available to one shipper, but not to another, and open one minute to a shipper, but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shippers' business among one another from time to time or for any reason whatever. Such we do not believe to be the meaning of the law. We find nothing in the statute authorizing routes or tariffs of any kind available to shippers only at the option and in the discretion of the carriers and upon such varying conditions and considerations as they may from day to day or from hour to hour see proper to be governed by, regardless of the wishes and interests of the shipper.
131 The commission has permitted a practice whereby an initial carrier may publish and file schedules of joint through rates over such through routes as it may designate therein, naming as parties to the same such and as many consenting connecting carriers as it may choose whose roads could form part or parts of any one or more of such through routes. Each of the many and varying practical through routes under such a schedule is, however, as separate and distinct as if it were the only one. Each is, in its entirety, without discrimination in every instance equally available under the law to every shipper as to the initial carrier. If it were otherwise, this method of forming and notifying by one tariff sched-

ule many continuous through routes, which has been sanctioned largely at the instance of the carriers and for their convenience and economy, could be perverted to the overthrow of one of the highest aims of the law—equality among all shippers. A wide field would be laid open for rank discrimination and gross injustice. The law requires the establishment and publication of rates on all routes. Therefore there can be no through route without through rates thereon. Such rates may be the combination or sum of the
132 local or separate rates of the several roads forming the through line, or they may be, and usually are, as in this case, less. So long as the through route exists the rates established thereon are guaranteed by command of the law itself to every shipper without discrimination, and no greater guarantee can be given by the initial carrier, as is insisted by the defendants in these cases as a basis for the claim of the exclusive control of the routing by the initial carrier.

The very essence of the continuous joint line authorized by law is its availability to shippers for through transportation. The law provides for no such thing as a conditional route ; neither can there be conditional routes constructed upon a condition such as is attempted to be enforced in these cases without promoting the very thing which the law was intended to prevent—undue and unreasonable discrimination.

In view of the terms and objects of the law, the use and function of transportation lines, and established rates thereon, it is a contradiction to say that schedules filed as in these cases create on the one hand many through continuous lines, each and all open at
133 all times to the initial carrier, but none of which is at any time open or available to the shipper except in the varying discretion of such carrier. To what end is it sought to give the initial carriers of this traffic exclusive, continuing control thereof to destination in defiance of the wishes and instructions of the owner and shipper of the property? The chief reason assigned by the defendants appears to be that it diminishes opportunity for successful arrangements between the shippers on the one hand and carriers and refrigerator car companies on the other for rebates. It does appear that after the control of all routing was taken over by the defendants and away from the shippers, the practice of paying rebates practically ceased. This, however, is not all. It further appears that a tonnage pool of this traffic as between the connecting carriers not defendants was established and that the defendants so control the routing as to give specific percentages of this traffic to their several connections, thereby fulfilling and giving effect to this unlawful and forbidden arrangement.

Reason is found in the facts shown for the belief that the suppression of the practice of allowing rebates was only an incidental result of and was not the primary or principal object
134 of the defendant carriers in taking over to themselves control of the routing beyond their respective roads, but that the ob-

ject was to give effect to the tonnage division before stated between their connections. The testimony shows that the rebates had not been paid or borne by these defendants, but largely by the owners of the refrigerator cars in which the fruit was shipped, and in part by eastern connections. It is strongly significant also that in respect alone of this freight (the only traffic shown to be covered by the tonnage division arrangement and none other in the whole range of varied commodities and classes of traffic) do the defendants assume to dictate its movement beyond their own roads, as between the established continuous lines. It seems an indefensible proposition that a vital right of the shipper shall be sacrificed, and violation of one important provision of the statute shall be fostered in order to induce obedience to another. The use of the shipper's property in this manner and to this end is as if it were seized upon, marshaled and maneuvered by the initial carriers for distribution among connections for their own advantage and to satisfy such connections, and thereby hold up rates by unlawful methods, re-
135 gardless of the rights of the owners of the property handled and used for these purposes. The carrier is a bailee of the property which is in its custody for the purpose of transportation only, and it cannot lawfully wrest from the owner that general control and direction of the same which is deemed by him needful for the prudent protection of his own property and interests and not inconsistent with the due performance of the service undertaken by the carrier.

Moreover, in respect of this traffic shippers are required to release the carriers from liability for damage by the weather, decay, shortage and delay. They are also required to prepay or guarantee freight charges to destination. So that the carriers are relieved of the care and risk on this property as to their customary lien on freight for the collection of their charges which, on shipments of this traffic, must be paid whether the goods bring a sufficient amount for that purpose or not. Neither does the initial carrier assume liability for damage resulting from the negligence of any connecting line. Hence, for such damage the shipper must seek recovery from such connecting carriers in
136 distant States. One of the reasons frequently advanced against the compulsory formation of through routes by carriers is that they might thereby be forced to make traffic arrangements and interchange freight with insolvent connections; yet in the present cases the shipper may under the rule in question be compelled to seek recovery of damages from an insolvent connecting carrier over whose road his traffic has been routed contrary to his express direction or one that does not promptly or fairly adjust damage claims. His property may be shipped over a line composed of several short roads, whereas he may desire, and it might be to his substantial benefit, that the same should move over a through line composed of one or two roads the management and service of which are efficient and satisfactory.

are in transit, will be diminished if not destroyed unless the shipper can dictate the routing. This is by no means conceded, but if it were true it would support the shipper's right of routing only on the theory that the shipper has also the *right* of diversion. In that view it might be that the denial of one right would seriously impair the enjoyment of another. The shipper undoubtedly has the right of stoppage in transit, but not, in my opinion, the right of diversion. As practiced in this case diversion is mainly if not wholly a privilege granted by the carrier, and not a right possessed by the shipper. If this be so we cannot measure the importance to the shipper of the right to route his traffic by the effect of denying that right upon the value of a privilege which the carrier may or may not extend. Disconnected from the privilege of diversion, it is not perceived that the *legitimate* value to the shipper of the right of routing is important. That right is important to the carrier; and this we may properly take into account in deciding to which of them the right belongs.

148 As the question turns upon the construction of a statute, we may well consider the bearing of either view upon the general purposes of the act and the public interests involved. This suggests certain facts which seem to me highly persuasive. Prior to January 1, 1909, the shippers were allowed to route this traffic according to their own pleasure. During that time they secured large sums in rebates which were paid by the refrigerator companies and by eastern connections of the initial carriers. One of these complainants received from this illicit source in the years 1895, 1896, 1898 and 1899 nearly $175,000. The amount received in 1897 was not ascertained, but it presumably equalled the average of the four years named. When routing was denied to the shippers, on January 1, 1900, these rebates entirely ceased, and have not since been obtained. No explanation was offered to modify the natural inference from these admitted facts. They illumine the case beyond the need of comment. Under routing by the shippers the law against rate-cutting was flagrantly disregarded; under routing by the carriers this law has been observed. In my judgment the commission should not seek to enforce a rule of conduct which, as experience

149 shows, may aid illegal practices, unless clearly convinced that the provision in question so requires. If the sixth section permits a construction, as I am confident it does, which lessens inducement and opportunity for offensive wrong doing, that construction should be adopted; and if the commission has any discretion in the premises, as I think it has, its discretion ought not to be exercised in favor of the confessed beneficiaries of criminal transactions.

It is stated in the prevailing report that a tonnage pool of this traffic was established as between the connecting carriers, and that the defendants so control the routing as to effect a violation of the anti-pooling section of the act. A careful examination of the evidence fails to convince me that there is any substantial basis for this con-

clusion. To my mind the inference is not warranted by the testimony. Indeed, this charge seems rather inconsistent with the finding that the actual routing was generally according to the request of the shippers. If in most instances, as is admitted, this traffic was carried by the route selected by the shipper, it is difficult to see how the connecting carriers were at the same time "pooling" it in violation of the fifth section. However, as this question turns upon divergent views of the facts, I do not care to discuss it further.

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Apart from other considerations, I am of opinion that control of routing by the carrier tends on the whole to public advant-ge. The more extensively through rates are formed by connecting lines, the wider and more general the movement of traffic under through rates, the greater the benefit—other things being equal—to both producer and consumer. Indeed, the public interest goes, as was said by the commission in its second annual report to the Congress, "to the establishment of such relations among the managers of roads as will lead to the extension of their traffic arrangements with mutual responsibility just as far as may be possible, so that the public may have in the service performed all the benefits and conveniences that might be expected to follow from general federation." Since these desirable results depend upon voluntary association, and since the inducement to the carriers to unite their facilities must to a great extent come from reciprocal dealings and an equitable interchange of business, it would seem that the control of routing is quite essential to the purposes they have in view, and the mutual interest which prompts them to co-operate.

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This is well illustrated by the case in hand. Large quantities of oranges originate in a comparatively small area in southern California reached by only two roads. The principal market for this product is the eastern half of the United States. Under the tariffs in question a uniform rate applies in the entire territory east of the Missouri river, and the initial carriers with numerous connecting lines form through routes to all important points in that territory. The facilities thus furnished are extremely favorable to the shippers. A large number of roads are practically united in one system for the movement of this commodity, which thereby secures through billing and through car service to hundreds of cities and towns where it is marketed. But why should these numerous routes be formed or continued if the shipper can say when and to what extent any particular route shall be used, or that certain routes shall not be used at all?

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This traffic appears to be very much concentrated at or near the locality where it originates. A large part of it is handled by two or three forwarding concerns. On the other hand, the lines of transportation are numerous and widely distributed. In a number of instances there are several lines between the same points, one apparently as good as another. Are these separate lines allowed to form a variety of through routes only on condition that the traf-

fic must be carried by whichever of them the shipper may happen to select? If so, the inducement to enter into joint arrangements, which are always optional, is not found in the mutual interest of the contracting parties. Neither of them can assure anything to the other; there is no consideration for their agreement. Hence it might occur that some carriers would decline to unite in forming through routes, for want of any honest benefit to be derived therefrom, while other carriers would seek such arrangements for the purpose of profiting by illegal bargains with the shipper. A rule which influences to either course is manifestly open to objection.

It seems to me that the tendency of the principle for which complainants contend is against the legitimate extension of through routes and other forms of lawful association, to say nothing of the opportunity it may afford for prohibited practices. And if
153 denying to the carrier the right in question should have the effect, as plainly it might, of reducing the number of available routes, not only for orange shipments but for the movement of traffic generally, I should regard the result as decidedly unfortunate. Therefore, without amplifying the argument, on grounds of public policy, and having reference to the greatest public benefit, including observance of the law in other respects, I hold that the rule most likely to prove beneficial in practical operation is the rule which accords the right of routing to the carrier.

This case presents another question which I am not willing to leave unnoticed. A considerable part of the testimony relates to the charges for refrigeration, which were alleged to be unreasonable, and the facts in that regard are quite fully set forth in the prevailing report. By the carriers and the interveners it was insisted that the commission has no jurisdiction of the refrigerator service or the charges therefor. This question was discussed at length both in oral argument and in the briefs submitted, and there is no probability that the material facts upon which it depends will be changed by further inquiry. For this reason I think it should now be decided.

154 In my opinion the defendant carriers are under no legal obligation to provide icing for orange shipments. In point of fact, as I hold, they have not undertaken to supply refrigeration for this traffic, but on the contrary have expressly declined to do so. The private car companies actually performing that service and receiving whatever is paid therefor are not common carriers, and for that reason are not subject to our jurisdiction. There is no doubt that the defendants are bound to furnish suitable cars for the transportation of oranges. In discharging this duty they supplied the shippers with fruit cars leased from certain car companies, and this the carriers had the right to do. It appears that these cars were not only suitable in other respects for orange shipments, but also contained receptacles for ice, being of the class described as ventilator refrigerator cars. It further appears that in the contracts under which these cars were leased there was a provision in substance re-

quiring the car companies, when requested by the shipper, to furnish refrigeration for a reasonable charge. I am unable to see how this provision, made in the interest of shippers, operates
155 to impose upon the carriers a legal duty not otherwise existing or in any way assumed. Would a stipulation in the ordinary contract with an express company, whereby the latter agreed that its charges to the public should be fair and reasonable, have the effect of subjecting the express company or its rates to the regulating authority of the commission?

This case is clearly distinguishable from the Truck Farmers case, and presents a materially different question. Upon the allegations in these complaints and the undisputed facts established by the evidence, I am convinced that the refrigeration charges here considered are not within our jurisdiction.

Some other statements appear in the majority report which I regard as erroneous, but as they do not relate to any question actually or impliedly decided, it is unnecessary to make them the subject of comment.

There is no objection to opening the case for further proof upon any issue which the commission has authority to determine, but upon the record as it now stands the complaints should be dismissed.

156 EXHIBIT H.

99 A–10 109.

157 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2d day of June, A. D. 1902.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Hon. Joseph W. Fifer, commissioners.

THE CONSOLIDATED FORWARDING COMPANY *v.* THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company.	No. 575.
THE SOUTHERN CALIFORNIA FRUIT EXCHANGE *v.* THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company.	No. 576.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and the com-

mission having, after due investigation, made and filed a report and opinion herein containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

It is ordered and adjudged that the defendants, The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company, be, and they severally are hereby, notified and required to wholly cease and desist, from and after the 20th day of June, 1902, from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons, or other citrus fruits from points in southern California to points on and east
158 of the Missouri river and other eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established and published joint or continuous lines or routes between any of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line.

It is further ordered and adjudged that said defendants, The Southern Pacific Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company, be, and they severally are hereby, notified and required to wholly cease and desist from and after the twentieth day of June, 1902, from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons, and other citrus fruits from points in southern California to points on and east of the Missouri river, for and during all of the time such rate or charge may be lawfully in force, over each and every of the established routes upon which the said rate or charge is in their published joint schedules or tariffs stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes when specified by a shipper for the transportation of his property is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants or either of them, may determine.

And it is further ordered that a notice embodying this order be sent forthwith to each of said defendants, together with a copy of the report and opinion of the commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

159 Office of the Interstate Commerce Commission.

WASHINGTON, D. C., August 6th, 1902.

I, Edward A. Mosely, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, eight in number, and marked A to H, both inclusive, are correct copies of the origi-

nals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 6th day of August, 1902.

[SEAL.] EDW. A. MOSELY,
Secretary of the Interstate Commerce Commission.

(Endorsed:) Filed Aug. 21, 1902. Wm. M. Van Dyke, clerk.

160 In the Circuit Court of the United States for the Southern Division of the Southern District of California.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company. } In Equity. No. 1039.

Motion of Complainant.

And now comes The Interstate Commerce Commission, complainant in the above entitled cause, by L. H. Valentine, Esq., United States district attorney for the southern district of California, and moves and respectfully prays the court for an order as to the manner of service of the bill of complaint in said cause and as to the manner of service of this motion and of the order thereon, and that the court require the defendants above named to file their answers to said bill of complaint on or before a day certain to be fixed by the court, and also to appear before the court here at such time as may be fixed by the court, then and there to show cause why such other preliminary orders as to the court may seem meet shall not be entered to speed the cause to a final hearing, as provided for in the 16th section of the act to regulate commerce.

L. H. VALENTINE,
United States District Attorney for the Southern District of California.

161 (Endorsed:) Filed Aug. 21 1902 Wm. M. Van Dyke clerk. No. 1039 U. S. circuit court ninth circuit southern district of California southern division The Interstate Commerce Commission *vs.* The Southern Pacific Company; The Atchison Topeka & Santa Fe Railway Company; The Santa — Pacific Railway Company & The Southern California Railway Company. Motion of complainant. Filed Aug. 21 1902 Wm. M. Van Dyke clerk.

162 In the Circuit Court of the United States for the Southern Division of the Southern District of California.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company. } In Equity. No. 1039.

Order of Court on Complainant's Motion.

And now, upon the filing of the bill of complaint and accompanying motion herein, it is hereby

Ordered, that the secretary of the Interstate Commerce Commission be, and he is hereby, authorized to make service of said bill of complaint and accompanying motion and of this order, by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of the said Interstate Commerce Commission, correctly addressed to the president or one of the vice-presidents or the secretary of each of the defendants above named.

It is also hereby ordered that the said defendants file their answers to said bill of complaint on or before the 6th day of October, 1902, and also appear before the court on the 9th day of October, 1902, and show cause why such other and further preliminary orders as to the court may seem meet should not be entered in this cause to speed the same to final hearing.

163 Done this 21st day of August, A. D., 1902.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court ninth circuit, southern district of California, southern division. The Interstate Commerce Commission *vs.* The Southern Pacific Company; The Atchison, Topeka & Santa Fe Railway Company: The Santa Fe Pacific Railway Company & The Southern California Railway Company. Order of court on complainant's motion. Filed Aug. 21 1902 Wm. M. Van Dyke clerk.

164 In the Circuit Court of the United States for the Southern Division of the Southern District of California.

THE INTERSTATE COMMERCE COMMISSION
v.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company. } In Equity. No. 1039.

The Joint and Several Demurrer of the Defendants The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and The Southern California Railway Company.

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint of the complainant to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer respectively and severally show:

I.

That the complainant has not in and by the said bill of complaint made or stated any such cause as doth or ought to entitle it to the relief sought by said bill and prayed for from or against these defendants, or either of them.

II.

That it appeareth from the complainant's own showing by said bill of complaint that it is not entitled to the relief prayed for by the bill against these defendants or either of them.

165 III.

That they are not proper parties to the said bill and that there is not and are not any corporations, persons, party or parties to the said bill who represents or represent the parties to the joint tariff rates mentioned and described in said bill of complaint, save and except the defendants named in said bill, although by the terms of said bill the joint tariffs sought to be changed and modified are shown to have been established by agreements made between the defendants named in the bill and more than one hundred and fifty separate and independent corporations or persons, who have not been made parties to the bill.

IV.

That it appeareth from said bill of complaint that each of the parties between whom the joint tariff rates referred to in the bill

The findings also indicate that the time of transit has increased since January 1, 1900, the time when the defendant carriers first undertook to dictate the routes over which the freight should pass. In at least two instances the evidence shows that the initial carrier receiving the freight for transportation has against specific direc-
tions of the shipper turned the same over to its competing
137 initial carrier. We know of no decision under the common
law or any statute in which sanction is found for such an arbitrary disregard of the obligations resting upon a common carrier. While the testimony indicates that requests for routing by shippers have generally been observed, the location of these initial lines and their connections makes it plain that the initial carrier can, when a shipment is requested to be routed one way, send it by another, and as this traffic is perishable, the disadvantages and discriminations which may result are obvious. Take the Southern Pacific, which has a southern line through El Paso and as far east as New Orleans and a northern line through Sacramento and thence east to Ogden. A shipment destined to Chicago may pass over either route, but in winter, other conditions being equal, the El Paso route would be preferred, while during the spring and perhaps early fall the Ogden route would be the more desirable. So in case of desired delivery in an eastern city by a particular road, the initial carrier may nevertheless route the freight for delivery by another terminal road. While it does not distinctly appear in testimony that such delivery has been
denied in any particular case, the manifest evil results of arbi-
138 trary application of the rule in question must be considered
in determining its legality. If the rule itself is lawful, whatever is done under that rule must be lawful. Another deprivation of right generally supposed to be vested in the shipper is found in these cases in the inability of the shipper to divert his freight in transitu to a point where the market conditions become favorable after transportation of the shipment commences. If the new destination is not upon the route substituted by the carrier for the route designated by the consignor, the shipper cannot avail himself of its advantages. Under these various conditions the shipper is practically stripped of all protection and put to commercial disadvantage.

It is not a sufficient excuse for the practice under discussion to say that the first carrier's control of the routing beyond its rails must be so exercised as not to unduly discriminate. The granting of a given routing to one and the denial of the same to another is itself an unjust discrimination. If injury or damage result in such a case, where is the remedy if the carrier acted within its lawful discretion?

The statute, though condemning undue and unreasonable
139 discrimination in all cases, has done more: It has prescribed
rules of action, and among others those in relation to established and open routes and rates intended to prevent discrimination.

An examination of the case of Post *et al. v.* Southern Ry. Co. 103 Tenn. 184, 16 Am. & Eng. Railroad Cases, 201, 225, 55 L. R. A. 481, 52 S. W. 301, to which reference has been made, will show that the

ovisions of the act to regulate commerce were not discussed in that se. At common law carriers were not required to publish their tes or indicate their routes, and if they did so, they were not re- uired to observe them. It was due very largely to the very fact widespread discriminations under such a system that the regulat- g statute was enacted prescribing rules for observance in order to ke away the opportunity for such discriminations.

Our conclusion is that the practice of the defendant carriers in nying to the shippers the use of their transportation facilities by e established routes is in violation of the statute, and, in its ap- plication by the defendants to the traffic in question, subjects
40 the owners and shippers thereof to undue, unjust and unrea- sonable prejudice and disadvantage, and gives to the carriers undue and unreasonable preference and advantage.

Complainants ask that the defendants be required to furnish their wn equipment directly, and not by lease. This is urged as a medy for the alleged abuses growing out of leasing cars from one the shippers engaged in competition with the complainants. While it must be conceded that such an arrangement as that com- lained of and referred to in the findings to some extent affords op- ortunities for unfair advantage and to say the least is naturally istasteful to other shippers who feel that their affairs are too much xposed to one of their competitors, still there is no authority in the aw for the commission to make any order to the effect suggested. arriers are left by the law to procure equipment for their business y lease as well as otherwise and are not prohibited from leasing rom a shipper. Neither are they compelled to contract in this re- pect with all shippers because they do with one. Any unlawful buses incident to such an arrangement as that complained of must e corrected by other methods than by such an order as the one proposed.

41 The evidence is unsatisfactory as a basis for definite con- clusions upon the following questions: Whether the defend- nt carriers pool their citrus fruit traffic or divide the earnings herefrom. Whether the blanket rate of $1.25 per hundred pounds pon oranges and other citrus fruits from southern California to oints on and east of the Missouri river, and the minimum carload veight of 26,000 pounds are unjust or unreasonable under the pro- isions of the statute. Whether the statute applies to the charges or refrigerating, and if so whether those refrigerating charges are njust or unreasonable. These questions are retained by the com- mission for further hearing and investigation.

An order in conformity with these conclusions will be entered and served upon the defendant carriers.

KNAPP, chairman, dissenting:

I cannot agree with the conclusion of my associates that complain- ants have the right to control the routing of their shipments, and will briefly state the grounds of my dissent.

142 The tariffs under which the traffic in question is carried contain the following notation: "In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to the initial carrier giving the guaranty." This is in effect a condition upon which the joint through rates are offered, and I perceive no good reason why such a condition may not be lawfully imposed. Connecting carriers are not required to form through routes or establish joint rates. They do so only by voluntary action. They are free to make such arrangements with each other and to discontinue them as and when they see fit. No law compels these privileges to be afforded or prevents their withdrawal. Since through routes and joint rates are wholly in the discretion of the carriers, both as to their establishment and termination, why may they not be offered on condition that the initial carrier shall control the routing?

The common-law doctrine upon this point appears to be well settled.

"At common law a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to
143 go beyond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of the contract, and if he holds himself out as a carrier beyond the line, so that he may be required to carry in that way for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use."

Atchison, T. & S. F. R. Co. *v.* Denver & N. O. R. Co. 110 U. S. 667, 680, 28 L. Ed. 291, 296, 4 Sup. Ct. Rep. 185.

To the same effect is a more recent case in which the right of routing was thoroughly discussed and the following proposition affirmed:

"We are of the opinion that upon the main questions as to the right of carrier and shipper to designate the route of through shipments at through rates, all other questions being out of the way, the law is and should be that, in the absence of any sufficient or controlling reason to the contrary, the carrier should have that right."

Post *et al. v.* Southern R. Co. 16 Am. & Eng. Railroad Cases (N. S.), 201, 225, 103 Tenn. 220, 55 L. R. A. 491, 52 S. W. 301.

144 It is worthy of notice that the facts reviewed in the latter case are quite similar, in some material aspects, to those disclosed by this investigation.

The sole ground, apparently, upon which the conclusion of my colleagues rests is that the common-law rule has been changed by the sixth section of the act to regulate commerce. I am unable to accept such a construction of that section. It certainly contains no express limitation upon the right otherwise concededly enjoyed by the carrier, nor do I find in its provisions anything which takes

away that right by implication. For aught I can see, the exercise of the right is entirely consistent with the due performance of every obligation which the sixth section imposes.

In my judgment it is technical, if not inaccurate, to say that, if the carrier as a matter of law may control the routing, "then a route *or tariff* may be available to one shipper but not to another, and open one minute to a shipper but closed the next." The tariff, that is, *the rate*, between any named points is all the while open and available to every shipper. Carriage to a given destination
145 is continuously offered to all, and for the same charge. There is no granting to one person of a rate to a place and at the same time refusing to another person the same rate to the same place. Equal or equivalent service at equal cost is constantly at the disposal of all who desire it. True, the initial carrier selects the agency beyond its own line for completing the service, but how does that abridge any right which the regulating statute gives to the shipper?

The sixth section contemplates that connecting carriers may establish joint tariffs of rates. When they do so they are required to file copies with the commission and are forbidden to advance or reduce such *rates* without prescribed notice. If the roads are merely connecting, so that only one physical line can be formed, the joint rate of course determines the route. But when a number of roads are so located and connected that various routes can be operated between the same points, and such roads elect to publish a joint rate,—that is, a single rate for a through service,—the law does not compel them, as I think, to submit all those routes to the arbitrary choice of the shipper. Their offer is to transport between given points at the rate announced. The rate being constantly available, there is
146 no prohibition against changing a particular route, or part of a route, and where there are several routes of like character and equal convenience, the rate being the same to the same point by all of them, it does not seem to me that any provision of the sixth section prevents the initial carrier from selecting the connecting line which shall unite in performing the service.

Of course the carrier must exercise the right of routing in such way as to avoid discrimination between different shippers. That goes without saying. And it is a significant fact in this connection that it was not alleged in the complaints, proved at the hearing or claimed in argument that any actual discrimination between shippers had resulted from the control of the routing by the defendant carriers. This at least shows that it is practicable for carriers to comply with the primary requirements of the act, which enjoin equality of treatment to all shippers, and at the same time, in cases like the one under consideration, exercise the right of routing traffic over connecting lines. To say that the condition contained in these tariffs cannot be enforced without unjust and unreasonable discrimination is to contradict the undisputed testimony in this case
147 and assert a result which concededly has not occurred.

It is said that the advantages of diversion, while shipments

be charged over the same lines for the transportation of oranges, lemons and other citrus fruits transported at local rates and not under the joint tariff.

VI.

That during the years from 1890 up to 1900 a practice of paying rebates had grown up among many of the railroads not entering into the State of California, but which were variously interested in having the oranges, lemons and other citrus fruits shipped from the State of California carried over their lines or portions thereof,
177 when such lines or any portion thereof could form any portion of a route over which such fruits might be shipped. That such payments of rebates were made either directly or through car-line companies to the various fruit exchanges and other large shippers of oranges, lemons and other citrus fruits from southern California, and amounted to from $15 to $25 a car, and was paid for the routing of the business over the lines of the railroads paying such rebates, thereby diverting the same from other connecting railroads which did not pay rebates; that these rebates were paid either directly by the railroad companies or through private car-line companies and were received and retained by the fruit exchanges, commission houses, middlemen, and others who shipped large quantities of oranges, lemons and other citrus fruits, and were not, as a rule, as these defendants are informed and believe and charge the fact to be upon their information and belief, received by or of any benefit to the growers of the oranges, lemons and other citrus fruits, or the individual or smaller shippers. That the payment of these rebates was in violation of the provisions of the act of Congress referred to and in direct violation of the joint tariff rates in force at the time between the parties thereto as hereinabove stated, and were made expressly for the sole and only purpose of controlling the routing of oranges, lemons and other citrus fruits from points of connection with the lines of railroad of the defendants named in the petition, or of railroads connected therewith. That the payment of such rebates operated to the great disadvantage of the defendants herein answering, and to each of them, and such unlawful practices diverted from the lines of these defendants, and each of them, great quantities of freight which otherwise these defendants, and each of them, would have handled over their several lines of railroad. That these defendants and each of them, during all of said time, constantly observed the joint tariff rates in force for the trans-
178 portation of freight of the character aforesaid and refused to pay any rebates or make any diminution of the charges fixed by such joint tariff, and therefore lost a great amount of traffic which would otherwise have come to the lines of these defendants, through such refusal of these defendants to give any rebates or otherwise charge any less rate than the joint tariff rates for the shipment of oranges, lemons and other citrus fruits under such joint tariff rates. These defendants further say, upon their information and

belief, and so charge the fact to be, that the parties engaged in the payment of these rebates, during the time aforesaid, arranged with the fruit exchanges, commission houses and other large shippers of fruit to pay the same direct to such parties, upon the sole condition that such parties would in routing their shipments route the same beyond the initial lines to the lines of railroad paying such rebates. That during all of said time the defendant The Southern California Railway Company and the defendant The Southern Pacific Company, as a matter of courtesy, but not as a matter of right, permitted the shippers to route their shipments of oranges, lemons and other citrus fruits going beyond the line of railroad of the initial carriers over such lines as the shipper might desire the same to pass, and that by reason thereof certain large shippers were enabled to procure bids in the way of rebates as herein stated.

That the secret cutting of tariff rates aforesaid made by certain connecting lines and the unlawful payment of rebates as aforesaid were made by such connecting lines entirely in regard to the transportation of oranges, lemons and other citrus fruits, and very little, if any, secret cutting of rates was made by connecting lines so far as these defendants are informed in respect to other traffic, so that these defendants have felt obliged and still feel obliged to more particularly enforce the rule aforesaid, reserving to initial
179 carriers the right to route in respect to oranges, lemons and other citrus fruits, in order to prevent the secret cutting of rates or unlawful payment of rebates by certain connecting carriers in respect to the transportation of the same.

That the great bulk of citrus fruits shipped from southern California is shipped to points over two thousand miles distant from the point of shipment. That such fruit is carried to the best advantage in cars known as refrigerator cars, which can by refrigeration be kept at a certain point of temperature when the weather is too warm for the safe transportation of such fruit without refrigeration, and such cars are also so constructed as to enable them to keep fruit contained in them from freezing when the weather is cold enough to injure or hurt such fruit by freezing if packed in ordinary freight cars; that it is to the best advantage of the traffic referred to to have this fruit remain in the cars in which it is packed at the point of shipment until it reaches its point of destination. That the cars best adapted to the transportation of this fruit are cars that are expensive and that, owing to the uncertainties concerning the quantity of fruit produced each season, the defendant companies are required, in order to handle this traffic economically, to keep on hand large quantities of such cars, either through the ownership of the same, or through contracts with car companies owning them. That it is essential during the season in which the bulk of oranges are shipped from southern California to the East, to wit, between the first of November in the fall of the year and the first of June in the summer of the succeeding year, to keep the cars devoted to such transportation on hand in sufficient quantities to take care of the

traffic, and receive all shipments offered at the initial points at the time they are offered. That to enable the defendants to do this, it is necessary that cars loaded with fruit shipped over the lines
180 of railroad connecting with the lines of these defendants should be promptly handled by such connecting lines and promptly returned to the defendants when emptied, so that the defendants can keep the requisite number on hand for the needs of the traffic at the various points in southern California where the traffic originates. That to prevent the cost to them of handling the traffic referred to from amounting to more than the traffic pays, it is necessary that cars used in the traffic should, to the extent that it is possible, be returned loaded with paying freight from all eastern points to which such cars may be sent, and that to enable the defendants to procure traffic with which to load such cars for the return trip it is and has been absolutely essential that these defendants should be able, through reciprocal arrangements with their connections, to distribute the freight going over the connecting lines which has originated on defendants' lines in such a way as to procure from such connecting roads, and their allies, the utmost amount of return freight to be loaded in such fruit cars for California points, when the same can be done without detriment to the interests of the shipper and the traffic; and it is also necessary for these defendants to deal with such connecting lines as will most promptly return such cars and most promptly settle all claims for damages against them on account of injuries to cars, or growing out of the traffic, which may arise at any time in favor of the defendants, or either of them, and in favor of shippers, and which will most promptly settle overcharges and claims of all character.

VII.

That prior to November 15, 1899, these defendants, the defendant The Southern Pacific Company and over one hundred and fifty other common carriers of freight and passengers made and entered into a joint tariff agreement known as the "East-bound joint tariff of class and commodity rates," which was and did become
181 effective November 15, 1899, whereby through joint tariff rates for the shipment of oranges, lemons and other citrus fruits from southern California points to all points east, north and south of California, by rail, were made and established to all principal points in the United States to which such traffic is generally shipped, which joint tariff rates to the various points outside of the State of California were and are *less than the sum of the local rates* over the different lines of roads from California to such points as the joint tariff rates apply to; and that to stop the paying of rebates, as aforesaid, and the demoralization growing out of such practice, and to permit the carriers receiving and loading the traffic referred to at the initial points of shipment to make such arrangement with the connecting lines as would enable them to the best advantage to have

the fruit cars engaged in this traffic returned over their lines loaded with freight, and in order to enable the initial carrier to have a prompt and speedy return of such cars from connecting carriers, and a prompt and speedy settlement of all claims for damages between the carriers or between the carriers and shippers, it was agreed by the several carriers joining in said joint-rate agreement that as one of the conditions for the shipment of any traffic under the joint tariff rates to any point outside of the State of California over the initial lines and any other lines connecting with such initial lines, or connecting with lines connecting with such initial lines, the routing of such shipments should be unqualifiedly reserved by the initial carrier. Such agreement was made in good faith to carry out said purposes and not for the purpose of effectuating a pool of such traffic between connecting lines, and these defendants aver that no such pool in fact existed. This rule was made effective on and after January 1, 1900, and pursuant to the agreement between the said
182 common carriers which were parties to said joint tariff; each of said defendants last herein — has refused and does refuse to accept or receive shipments in carload lots of the citrus fruits referred to, for points on the lines of other carriers, subject to the joint-rate agreement, at the joint tariff rate, except upon the condition and agreement that the initial carriers control the routing of the same, where there is more than one route made by two or more lines to the point of destination.

VIII.

That the enforcement of this rule and practice at once ended the payment of rebates as aforesaid and enabled all the parties to the joint tariff rate agreement to observe the joint tariff rates without any secret cutting or reduction of the same by the payment of rebates or otherwise. That on January 18, 1900, a new joint traffic agreement was made between these defendants and the various other common carriers hereinbefore referred to for the routing of eastbound class and commodity freight from southern California east, which also required by the agreement making such joint rate as one of the conditions upon which joint rates should be made and maintained that the initial carrier should retain the absolute right of routing shipments to points outside of the State of California when they were reached by two or more carriers joining in the joint-rate tariffs. That the joint tariff rates established as aforesaid and filed with the complainant herein, and referred to in the report and decision of the complainant, attached to its petition, were based and made upon the condition (among others) above stated. That no agreement was made or entered into between these defendants and any other carrier or carriers since November 15, 1899, whereby any joint tariff rates were made or to be made or maintained except that they were based upon the condition stated.

183 IX.

That the said rule reserving to the initial carrier the right to route fruit transported under the joint tariff rate is in all respects reasonable and just and one which it is fair for said initial carrier to insist upon as the condition for its making or maintaining joint tariff rates with connecting carriers, and for its diverting shipments from the original point of destination. That these defendants and each of them divert shipments of citrus fruit, without expense to the shipper, from the original routing and the original point of destination. In making such diversions the defendants and each of them do free telegraphing for the benefit of the shippers and allow and make diversions of citrus fruit shipments which are not allowed and made with respect to other freight; that these defendants and each of them take only the final through rate on shipments of citrus fruits so diverted and make no charge for the expenses or losses in rates or earnings on account of such diversions, and that such diversions are the source of great losses to the defendants and to each of them. That said initial carrier is in a better position than the shipper to determine from time to time the route beyond its line over which the shipment should go to destination, as it is in a position to know and determine what connecting carrier is in the best position and condition at the time to receive said shipment and to handle the same expeditiously and without loss or damage. That initial carriers are interested in preventing losses or damages, if possible, even upon connecting lines, as it is frequently a difficult matter to determine beyond controversy where, in case of loss or damage, such loss or damage occurred and upon what line and how, and such initial carrier is therefore frequently called upon to participate in the adjustment of claims for losses or damages, although as a matter
184 of fact the loss or damage may not have occurred upon its line. That initial carriers should also be permitted to make it a condition upon which they will enter into joint tariffs with connecting lines to reserve the sole right of routing traffic, especially of a perishable nature, because of frequent disputes which arise between connecting carriers concerning the adjustment of damages claimed by shippers, and because they can ascertain quickly which connecting carriers are the fairest in their adjustment and settlement of such losses and damage claims, and which will most quickly return to the initial carriers the cars furnished by such initial carriers for such traffic, and which will best be able to reciprocate in the loading of such cars with Pacific Coast freight, in order to save the loss of returning such cars empty. That the joint tariff schedule and agreement referred to and set forth by complainant in its said petition in this case, containing the condition reserving to the initial carrier the unqualified right of routing as set forth in said petition, was made, entered into and filed with the complainant by the several respective parties thereto upon the understanding that such condition was of the essence of such joint tariff agreement. That

without such condition said joint tariff agreement would not and could not have been effected. That the nature of the business of shipping various citrus fruits or products under said agreement from California to points as permitted by said joint tariff agreement over the various routes specified therein, in connection with other transportation, is such that in order to prevent injurious, dangerous and destructive congestion of traffic at various times and points of transportation, and the losses, perils and dangers attendant thereon, and to secure to such transportation companies the rights and privileges essentially necessary to their protection as common carriers, and to enable them properly to perform their duties as common carriers, it was and is an essential right and
185 duty of the parties to said joint traffic agreement in the safe, proper and efficient operation and management of their respective lines of transportation to select the initial carrier mentioned in said condition as to routing as and for the efficient executive agent of all said parties to such joint tariff agreement. That without such agency so agreed upon and selected by the terms of such joint traffic agreement to control and direct such routing, the said respective parties to such joint tariff agreement cannot be protected in their rights or effectively and properly perform their duties to the public as common carriers. That by reason of the premises the rights reserved as to routing by such condition in said joint traffic agreement is an essential and necessary part of the operation and management of the respective transportation lines of the respective parties to said joint traffic agreement and a right lawfully and necessarily exercised by such parties and by these defendants.

X.

That they deny that by the making and publication of tariffs concerning joint rates over connecting lines they have made or established joint or continuous lines or routes between any other points on other railroad lines and points on their several lines; on the contrary, these defendants aver that such joint tariffs simply fix the rates only which are to be charged for continuous shipments over their lines and connecting lines from the State of California, and do not by agreement or otherwise create new lines or routes for the transportation of persons and property, or operate to extend the several respective lines of these answering defendants beyond their actual termini.

XI.

That they severally are and always have been willing to accept from any person, or persons, corporation or corporations, or bodies of any character, freight at any point in California destined
186 to points outside of the State of California under any routing of such freight beyond the lines of the defendants, or either of them, as the shipper may wish or desire to name or designate, upon the payment for transportation of the same over the lines of

these defendants, or over the lines of either of them, of the local rates established and published by these defendants and each of them for the transportation of property of the various classes of which the defendants or either of them are common carriers, and that the only denial that these defendants or either of them have made or are making of the right of the shipper to route freight or property over their lines or either of them to points beyond their lines or lines of other common carriers is the denial of the right upon such routing by the shipper to apply the joint tariffs established for the transportation of such freight or property by the agreement entered into between these and the other common carriers referred to hereinbefore.

XII.

That the enforcement of the order sought to be enforced by the complainant in this action would nullify the joint agreement which resulted in the making of the joint tariff rates, as referred to hereinbefore, and would compel these defendants, or either of them, when acting as initial carrier, to charge the local tariff rates for the transportation of any property from out of the State of California to points on lines of railroad of other railroad companies, as under the agreement between the different carriers which resulted in the establishment of the joint tariff rates there is no time fixed or limit within which such joint rates are to remain in force and effect, and each carrier to such agreement is at liberty at all times to withdraw from the same and refuse longer to be a party to such agreement as to such joint tariffs.

187 Wherefore, these defendants having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to their best knowledge and belief, humbly pray this honorable court to enter its judgment that these defendants respectively be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this honorable court may seem meet and in accordance with equity.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.
[SEAL.] By G. HOLTERHOFF, JR.,
Its Western Assistant Secretary.
SANTA FE PACIFIC RAILROAD COMPANY,
[SEAL.] By G. HOLTERHOFF, JR.,
Its Assistant Secretary
SOUTHERN CALIFORNIA RAILWAY COMPANY,
[SEAL] By G. HOLTERHOFF, JR., Its Secretary.
T. J. NORTON, Attorney for said Defendants.

ROBERT DUNLAP, Of Counsel.

(Endorsed:) No. 1039 U. S. circuit court 9th circuit southern district of California southern division The Interstate Commerce Commission complainant *vs.* The Southern Pacific Co. *et al.* defendants. Joint and several answer of defts A. T. & S. F. Ry. Co. S. F. P. R. R. Co. and S. C. Ry. Co. Received copy of the within answer of A. T. S. F. *et al.* this 20 day of July 1903. L. H. Valentine Esq. U. S. att'y L. A. Shaver att'y for com. J. H. Call sp'l ass't U. S. att'y *attorneys for commission.* Filed Jul- 20 1903 Wm. M. Van Dyke clerk Chas. N. Williams deputy. T. J. Norton 516 Conservative Life building Los Angeles, Cal. phone main 1466 attorney for said defendants.

188 In the Circuit Court of the United States for the Southern Division of the Southern District of California.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, Defendants. } In Equity. No. 1039.

Answer of the Defendant The Southern Pacific Company.

The above named defendant The Southern Pacific Company answering the petition of the complainant herein for answer thereunto

I.

Admits the allegations contained in paragraphs I to X inclusive of the said petition.

II.

This defendant further answering denies that the rule and practice thereunder which the defendants were and are required to cease and desist from further use and enforcement of, by the orders shown by Exhibit "H" attached to the petition herein, were, or are, in violation of the act to regulate commerce, and further denies that said rule and practice subjects the shippers of oranges, lemons, and other citrus fruits from points in southern California to points on and east of the Missouri river and to other eastern destinations, to an undue or unreasonable prejudice or disadvantage, as in
189 said petition alleged or otherwise, and further denies that such rule and practice subjects the traffic in oranges, lemons and other citrous fruits between southern California and points on and east of the Missouri river, and other eastern destinations to an

are effective are necessary parties to any action or proceeding to in any wise change or modify such joint tariffs, or any of the conditions upon which the same were or are based.

V.

That it appeareth from the complainant's own showing by the said bill of complaint that it had no jurisdiction to make or promulgate the orders or either of them sought to be enforced by said bill against these defendants.

VI.

That it appeareth from the complainant's own showing by said bill of complaint that this court hath no jurisdiction to enforce the orders made by the complainant or either of such orders, which by the terms of said bill are sought to be enforced against these defendants.

VII.

That it appeareth from the said bill of complaint that the facts found by the complainant upon the hearing had before it, and which are attached to and made a part of said bill of com-
166 plaint, and upon which the orders sought to be enforced in this action are based, were and are wholly insufficient to authorize or give to the complainant jurisdiction to make the orders, or either of such orders.

VIII.

That it appeareth from said bill of complaint that the orders sought to be enforced in this action were made by the complainant without authority and that each of said orders is void for want of authority on the part of complainant to make or enforce the same

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants severally and respectively demur thereto and humbly demand the judgment of this court whether they or either of them shall be compelled to make any further or other answer to the said petition, and each of said defendants prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
SANTA FE PACIFIC RAILROAD COMPANY, AND
SOUTHERN CALIFORNIA RAILWAY COMPANY,
By C. N. STERRY, Solicitor.

STATE OF ILLINOIS, }
County of Cook, } ss:

W. A. Bissell, being first duly sworn, deposes and says:

That he is the assistant traffic manager for each of the above-named defendants joining in the above demurrer in said cause, and that

the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

W. A. BISSELL.

167 Subscribed and sworn to before me this 29th day of September, 1902.

[SEAL.] JOHN A. McDONALD,
Notary Public in and for the County of
Cook, State of Illinois.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

C. N. STERRY,
Of Counsel for Defendants.

(Endorsed:) In equity. No. 1039. In the circuit court of the United States, 9th circuit southern district of California The Interstate Commerce Commission *vs.* The Southern Pacific Co. *et al.* Joint and several demurrer of the A. T. & S. F. Ry. Co., S. F. P. R. R. Co. and the S. C. Ry. Co. Filed Oct. 6, 1902. Wm. M. Van Dyke clerk Chas. N. Williams deputy C. N. Sterry 516 Conservative Life bldg. Los Angeles, Cal. Solicitor for defendants demurring.

168 In the Circuit Court of the United States for the Southern Division of the Southern District of California.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and the Southern California Railway Company, Defendants.	In Equity. No. 1039.

The demurrer of The Southern Pacific Company, one of the defendants above-named, to the bill of complaint of The Interstate Commerce Commission, the above named complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and, for cause of demurrer showeth that the said complainant hath not, in and by said bill, made or stated such a cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether it shall be compelled to make any further or

other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

WM. F. HERRIN,
Solicitor and of Counsel for Defendant
Southern Pacific Company.

169 FLINT & BARKER, Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

WM. F. HERRIN,
Of Counsel for Defendant Southern Pacific Company.

San Francisco, Cal., September 22nd, 1902.

STATE OF CALIFORNIA,
Northern District of California, } *ss*:
City and County of San Francisco,

N. T. Smith being first duly sworn, deposes and says: I am an officer, to-wit, the treasurer of The Southern Pacific Company, a corporation, one of the above-named defendants, and on behalf of said defendant I depose and say that the foregoing demurrer is not interposed for delay.

N. T. SMITH.

Subscribed and sworn to before me this 22nd day of September, A. D. 1902.

[SEAL.] E. B. RYAN,
Notary Public in and for the City and County of
San Francisco, State of California.

(Endorsed:) No. 1039. U. S. circuit court, southern division of the southern district of California. The Interstate Commerce Commission, complainant, *vs.* The Southern Pacific Company *et als.* defendants. Demurrer to bill. Service of the within demurrer is hereby admitted this 6th day of Oct., A. D. 1902. L. H. Valentine,
attorney for petitioner. Filed Oct. 6, 1902. Wm. M. Van
170 Dyke, clerk. Chas. N. Williams, deputy. Wm. F. Herrin
solicitor and of counsel for defendant, Southern Pacific Co. Flint & Barker, of counsel.

171 At a stated term, to wit, the January term, A. D. 1903, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Monday the first day of June, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable Olin Wellborn, district judge.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

This cause having heretofore been submitted to the court for its consideration and decision on the demurrer of The Southern Pacific Company, one of the defendants above named, to complainant's bill of complaint, and the joint and several demurrer of the defendants The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railroad Company and The Southern California Railway Company, and the court having duly considered the said demurrers and being fully advised in the premises, it is now, on this 1st day of June, 1903, being a day in the January term, A. D. 1903, of said circuit court, ordered that said demurrers be, and the same hereby are overruled; it is further ordered, on the application of counsel for defendants, and with the consent of counsel for complainant, that each of said defendants have thirty (30) days within which to serve and file its answer to complainant's bill of complaint.

172 (Endorsed:) No. 1039. U. S. circuit court ninth circuit, southern district of California, southern division. The Interstate Commerce Commission *vs.* The Southern Pacific Company *et al.* Copy order overruling demurrers. Filed Sep. 20, 1904. Wm. M. Van Dyke, clerk. Chas. N. Williams, deputy.

173 In the Circuit Court of the United States for the Southern Division of the Southern District of California.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, Defendants. } In Equity. No. 1039.

Joint and several answer of the defendants The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railroad Company and Southern California Railway Company to the petition filed herein.

The above named defendants, jointly and severally answering the petition, say:

I.

They admit the allegations contained in paragraphs I to X, inclusive, of the petition herein filed by the complainant.

II.

They deny that the rule, and the practice thereunder, which the defendants were and are required to cease and desist from further use and enforcement of, by the orders shown by Exhibit "H," attached to the petition herein, were, or are, in violation of the act of Congress to regulate interstate commerce, approved March 2, 1889, and the acts amendatory thereof; and further deny that said rule and practice subjects the shippers of oranges, lemons and other citrus fruits from points in southern California
174 to points on and east of the Missouri river and to other eastern destinations to an undue or unreasonable prejudice or disadvantage, as in said petition alleged, or otherwise; and further deny that such rule and practice subjects the traffic in oranges, lemons and other citrus fruits between southern California and points on and east of the Missouri river and other eastern destinations to an undue or unreasonable prejudice or disadvantage, as alleged in said petition, or otherwise; and further deny that such rule and practice gives to the said defendants, or to either of them, any undue or unreasonable preference or advantage whatsoever, as alleged in said petition, or otherwise.

III.

That the defendant The Southern California Railway Company is now and for more than ten years last past has been a corporation duly incorporated and created under the laws of the State of California, and is now, and during said time has been, a common carrier of freight and passengers within the limits of the State of California only under and pursuant to the constitution and laws of the said State. That the Santa Fe Pacific Railroad Company is now, and since July 1, 1897, has been, a corporation duly organized and incorporated under and by virtue of an act of Congress approved March 3, 1897, and has been during all of said time a common carrier of freight and passengers from, and between Albuquerque, in the Territory of New Mexico, and Barstow, Mojave and Bakersfield, in the State of California, but since the institution of this suit its railroad was conveyed to and is now being operated by the Atchison, Topeka and Santa Fe Railway Company. That the Atchison, Topeka and Santa Fe Railway Company is now, and has been since January 1, 1896, a corporation duly organized and incorporated under the laws of the State of Kansas, and has been during said time, and now is, the owner or lessee of a large system of railroads running from the city of Chicago
175 in the State of Illinois to various points in different States and Territories, including the line of railroad from the city of Chicago in the State of Illinois to Albuquerque in the Territory of New Mexico. That these three defendants form a system of railroads which is commonly known and called the "Santa Fe system," although during the period of time covered by the petition each of the railroads of each of said corporations was separately and inde-

pendently operated, while the separate lines of these defendants form, through physical connections, a continuous through line from Southern California to Denver, Colorado, Kansas City, Missouri, and Chicago, Illinois, and intermediate points. That said Santa Fe system, through the defendant The Southern California Railway Company, reaches the principal points of business in that portion of the State of California known as southern California, being the portion referred to in the petition of the complainant herein as "southern California." That many of the principal points of business in southern California reached by the Santa Fe system, as aforesaid, are also reached by the lines of the defendant The Southern Pacific Company.

IV.

That from the year 1899 up to the present time the shipments of citrus fruits from southern California to points east, north and south of the State of California have increased from time to time, so that the same have increased from about 5000 carloads in the year 1890 up to as high as 25,000 carloads. That the great bulk of the shipments in carload lots of such fruit in any year is sent from California to what is known as Missouri River, Chicago and intermediate points, and to the Atlantic seaboard and intermediate cities and destinations east of Chicago. That in order to reach any of the points outside of the State of California by rail, such shipments have to pass over either the line of the defendant The Southern Pacific
176 Company or the line of the defendant The Southern California Railway Company. That during all the time referred to the defendants herein, and each of them, have had and established by agreement containing certain terms, rules and conditions, with many other railroad companies, joint through tariff rates, which, among the many other things, has covered the shipment of oranges, lemons and other citrus fruits from southern California points to all points outside of the State of California which were reached by the respective railroads of the corporations entering into and agreeing upon said joint tariff rates, including practically all points to which such California fruit has been and will be shipped. That such joint tariff rates and the agreements creating the same have from time to time, when made by and between the railroads joining in the same, been filed with the complainant in this action, as required by law, so that the complainant at all times has been fully advised of and concerning these rates and the terms, rules and conditions upon which they were made.

V.

That during all the time herein referred to the joint tariff rates on such citrus fruits destined to be carried over two or more lines of railroad to any point outside of the State of California have been very much *less* than the aggregate sum of the *local tariffs* that would

their protection as common carriers and to enable them to properly perform their duties as common carriers; it was and is an essen-
199 tial right and duty of the parties to said joint traffic agreement in the safe, proper and efficient operation and management of their respective lines of transportation to select the initial carrier mentioned in said condition as to routing, as and for the efficient executive agent of all said parties to such joint tariff agreement. That without such agency so agreed upon and selected by the terms of such joint traffic agreement, to control and direct such routing the said respective parties to such joint tariff agreement cannot be protected in their rights or effectively and properly perform their duties to the public as common carriers. That by reason of the premises the rights reserved as to routing by such condition in said joint traffic agreement is an essential and necessary part of the operation and management of the respective transportation lines of the respective parties to said joint traffic agreement and a right lawfully and necessarily exercised by such parties and by these defendants.

Wherefore, these defendants having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to their best knowledge and belief, humbly pray this honorable court to enter its judgment, that these defendants respectively be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this honorable court may seem meet and in accordance with equity.

W. F. HERRIN,
Solicitor and of Counsel for Defendant
Southern Pacific Company.

(Endorsed:) No. 1039. U. S. circuit court, southern division of the southern dist. of Cal. The Interstate Commerce Com-
200 mission, complainant, *vs.* The Southern Pacific Co. *et als.*, defendants. Answer of S. P. Co. Service of the within answer is hereby admitted this 20 day of July A. D. 1903. L. A. Shaver att'y for comm. L. H. Valentine U. S. att'y J. H. Call sp'l ass't U. S. att'y attorneys for commission. Filed Jul- 20 1903 Wm. M. Van Dyke clerk. Chas. N. Williams deputy. W. F. Herrin, sol'r for S. P. Co.

201 In the Circuit Court of the United States, Southern Division, Southern District of California, Ninth Circuit.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants.
} Case No. 1039. Replication.

This replicant, The United States, saving and reserving to itself, all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answers of defendants, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and Southern California Railway Company, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct and humbly prays as in and by its said bill it hath already prayed.

L. A. SHAVER,
Solicitor for Complainant.
L. H. VALENTINE,
United States Attorney.
JOSEPH H. CALL,
Special Assistant Attorney.

202 (Endorsed:) *Copy* Case No. 1039 U. S. circuit court, so. div. so. dist. of Cal. 9th circuit. I. C. C. *vs.* S. P. Co., *et al.* Replication. Received copy of the within replication this 19th day of August, 1903. T. J. Norton, solicitor for A. T. & S. F. Ry. Co. S. F. P. R. R. Co. and S. C. Ry. Co. Copy mailed to solicitor of S. P. Co. Aug. 19 1903. J. H. Call. Filed Aug. 19 1903 Wm. M. Van Dyke clerk.

203 In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, and Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants. } No. 1039.

The complainant filed its petition herein on the 21st day of August, 1902, which is hereto annexed.

On the 21st day of August, 1902, the complainant filed herein in connection with said petition, a motion for an order as to the manner of service of the bill of complaint, etc., which motion is hereto annexed.

On the 21st day of August, 1902, the court made, filed and entered an order herein, as to the manner of service of the bill of complaint, and as to the manner of service of the motion and the order thereon, and requiring the defendants to appear, answer and show cause herein, which order is hereto annexed.

On the 6th day of October, 1902, the joint and several demurrer of the defendant- The Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and The Southern California Railway Company, to the bill of complaint, was filed
204 herein and is hereto annexed.

On the 6th day of October, 1902, the demurrer of defendant The Southern Pacific Company to the bill of complaint was filed herein and is hereto annexed.

On the first day of June, 1903, the court made and entered an order herein, overruling the joint and several demurrer of the defendants The Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and The Southern California Railway Company, and the demurrer of The Southern Pacific Company to the bill of complaint, a copy of which order is hereto annexed.

On the 20th day of July, 1903, the joint and several answer of the defendants The Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and The Southern California Railway Company, to the petition, was filed herein and is hereto annexed.

On the 20th day of July 1903, the answer of the defendant The Southern Pacific Company to the petition was filed herein and is hereto annexed.

The replication of complainant to the answers of defendants The Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and The South-

ern California Railway Company, was filed herein on the 19th day of August, 1903, and is hereto annexed.

Testimony was thereafter taken on behalf of the respective parties and filed in the clerk's office of said circuit court.

On the 22nd day of April, 1904, being a day in the January term, A. D. 1904, of said circuit court—present: the Honorable Olin Wellborn, district judge—said cause came on to be heard before the court on the pleadings and proofs, and the court having heard the pleadings and proofs and the arguments of counsel, and the cause having thereafter been submitted to the court for
205 its consideration and decision upon the pleadings, proofs and arguments and upon briefs which were thereafter filed, and the court having duly considered the same and being fully advised in the premises, thereafter, on the 6th day of September, 1904, being a day in the July term, A. D. 1904, of said circuit court, ordered that a decree be entered herein enjoining the defendants from disobedience of the order of the Interstate Commerce Commission set forth in the petition herein, and accordingly on the 20th day of September, 1904, a final decree was signed, filed, entered and recorded herein, and is hereto annexed.

206 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSON, Complainant, *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, and Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Final Decree.

This cause came on for final decree in open court this 20th day of September, A. D. 1904; the complainant appeared by Mr. L. A. Shaver, its attorney, Mr. L. H. Valentine, United States district attorney, and Mr. Joseph H. Call, special assistant attorney.

The defendants, The Southern Pacific Company, appeared by Mr. W. F. Herrin, Mr. P. F. Dunne, Mr. Frank P. Flint, and Mr. D. Barker, its attorneys and counsel; and The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and Southern California Railway Company, appeared by Mr. Robert Dunlap, Mr. T. J. Norton and Mr. E. D. Kenna, its solicitors and counsel respectively.

Issue having been joined, the testimony having been taken and the cause having been duly argued and submitted, and the
207 court being fully advised in the premises, now finds and determines, that the allegations of fact made in the bill of complaint herein are true, and, that the defendants and their eastern connections, said connections being different and competing railroads, filed with the Interstate Commerce Commission, pursuant to a previous agreement between them, a joint tariff relating to citrus fruits, and fixing thereon a through rate of $1.25 per hundred pounds from southern California to all points east of the Missouri river, and, that said agreement and tariff contain, among others, the following provision:

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving the guaranty."

That said agreement and tariff are now in force and observed by all of the parties thereto, and, that the said routing provision so agreed upon and embodied in said tariff is an agreement and combination for the pooling of freights of different and competing railroads, and violative of section 5, of the commerce act mentioned in said bill of complaint, and, that the order of the Interstate Commerce Commission attached to and made a part of said bill of complaint and hereinafter set forth is a lawful order, and, that defendants have ever since its issuance violated and disobeyed the same in all of its requirements. That said order is in words and figures as follows:

"THE CONSOLIDATED FORWARDING COMPANY "*v.* "THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company.	No. 575.
"THE SOUTHERN CALIFORNIA FRUIT EXCHANGE "*v.* 208 "THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company.	No. 576.

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and the commission having, after due investigation, made and filed a report and opinion herein containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

"It is ordered and adjudged that the defendants, The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway

Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company, be, and they severally are hereby, notified and required to wholly cease and desist, from and after the 20th day of June, 1902, from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons, or other citrus fruits from points in southern California to points on and east of the Missouri river and other eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established and published joint or continuous lines or routes between and of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line.

"It is further ordered and adjudged that said defendants The Southern Pacific Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company, be, and they severally are hereby, notified and required to wholly cease and desist, from and after the twentieth day of June, 1902, from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges,
209 lemons, and other citrus fruits, from points in southern California to points on and east of the Missouri river, for and during all of the time such rate or charge may be lawfully in force, over each and every of the established routes upon which the said rate or charge is in their published joint schedules or tariffs stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes when specified by a shipper for the transportation of his property is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants or either of them, may determine.

"And it is further ordered that a notice embodying this order be sent forthwith to each of said defendants, together with a copy of the report and opinion of the commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce."

Now, therefore, it is ordered, adjudged, and decreed, that the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, sometimes designated as the Santa Fe Pacific Railway Company, and the Southern California Railway Company, and their officers, agents, employees and servants be, and they hereby severally are, from and after the making and entering of this decree, enjoined and restrained from further continuing any such violation or disobedience of said order and requirement of said Interstate Commerce Commission, and they are hereby enjoined and required to fully obey the same in all respects.

OLIN WELLBORN, Judge.

Decree entered and recorded September 20th 1904
WM. M. VAN DYKE, Clerk,
By CHAS. N. WILLIAMS, Deputy.

210 (Endorsed:) No. 1039 In the circuit court of the United States 9th circuit for the southern district of California southern division The Interstate Commerce Commission complainant *vs.* The Southern Pacific Company *et als.* defendants Final decree Filed Sep. 20 1904 Wm. M. Van Dyke clerk Chas. N. Williams deputy.

211 Whereupon, said petition, motion for an order as to the manner of service of the bill of complaint, etc., order as to the manner of service of the bill of complaint, etc., the joint and several demurrer of defendants The Atchison, Topeka & Santa Fe Railway Company, *et al.*, the demurrer of defendant The Southern Pacific Company, copy of order overruling the joint and several demurrer of defendants The Atchison, Topeka & Santa Fe Railway Company, *et al.*, and the demurrer of defendant The Southern Pacific Company, the joint and several answer of defendants The Atchison, Topeka & Santa Fe Railway Company, *et al.*, the answer of the defendant The Southern Pacific Company, replication to the answers, and final decree are hereto annexed, said final decree being duly signed, filed and enrolled pursuant to the practice of said circuit court. Attest, etc.

WM. M. VAN DYKE, Clerk,
[SEAL.] By CHAS. N. WILLIAMS, Deputy.

(Endorsed:) No. 1039 In the circuit court of the United States ninth judicial circuit, for the southern district of California, southern division The Interstate Commerce Commission *vs.* The Southern Pacific Company, *et al.* Enrolled papers Filed September 20th 1904 Wm. M. Van Dyke clerk by Chas. N. Williams deputy clerk. Recorded Decree Register Book No. 3 page 96.

212 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, and Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants. } No. 1039.

Amendment to Final Decree.

This cause came on further to be heard in open court this 22nd day of September, A. D. 1904, and on motion of Mr. L. H. Valen-

tine, United States attorney and Mr. Joseph H. Call, special assistant attorney for complainant, and no objection being made thereto and good cause appearing therefor, it—

It is now further ordered, adjudged and decreed, that the final decree heretofore made and entered in this cause on the 20th day of September, A. D. 1904, be, and the same hereby is amended by adding thereto the following further provision:

"It is further ordered, adjudged and decreed, that the complainant have and recover from the defendants, their reasonable costs and disbursements in this cause, taxed in the sum of six hundred sixty one & $\frac{30}{100}$ ($661\frac{30}{100}$) dollars, and that execution issue therefor."

OLIN WELLBORN,
District Judge.

213 Amendment to final decree entered and recorded September 22nd, 1904.

WM. VAN DYKE, Clerk,
By CHAS. N. WILLIAMS, Deputy.

(Endorsed:) No. 1039. In the circuit court of the United States, ninth circuit, southern division. The Interstate Com. Com. *vs.* Southern Pacific Co., *et al.* Amendment to final decree. Filed Sep. 22 1904 Wm. M. Van Dyke, clerk Chas. N. Williams deputy.

214 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

Depositions of Paul Morton and C. B. Strohm Taken in the Above Entitled Cause, at Chicago, Illinois, on January 5th and 6th, 1904.

CHICAGO, ILLINOIS, January 5th, 1904.

Parties met at Chicago, Illinois, this day, before Wilson E. McDermut, a notary public in and for Cook county, State of Illinois.

Appearances: Mr. Joseph H. Call, special assistant United States attorney, for complainant; Mr. T. J. Norton and Mr. Robert Dunlap for the defendants Atchison, Topeka and Santa Fe Railroad Company, Santa Fe Pacific Railroad Company, and Southern California Railway Company.

It is stipulated by the parties to the above entitled cause that the depositions of Paul Morton and C. B. Strohm may without notice be taken in shorthand, at Chicago, Illinois, on January 5th, 1904, before Wilson E. McDermut, a notary public in and for Cook county, Illinois, and by him transcribed and transmitted to the clerk of the

undue or unreasonable prejudice or disadvantage as alleged in said petition or otherwise.

III.

For a further defense unto the matters set forth in said petition this defendant avers, that many of the principal points of business in southern California reached by the lines of the Southern Pacific Company are also reached by the lines of the Santa Fe system of railroads.

This defendant further avers that from the year 1899 up to the present time the shipment of citrus fruits from southern California to points east, north and south of the State of California have increased from time to time, so that the same has increased from about 5000 carloads in the year 1890 up to as high as 25,000 carloads. That the great bulk of the shipments in carload lots of such fruit in any year is sent from California to what is known as Missouri River, Chicago and intermediate points, and to the Atlantic seaboard and intermediate cities and destinations *each* of Chicago. That in order to reach any of the points outside of the State of California by rail, such shipments have to pass over either the line of the defendant The Southern Pacific Company or the line of the defendant The Southern California Railway Company. That during all the time referred to the defendants herein, and each of them, have had and established by agreement, containing certain terms, rules and conditions, with many other railroad companies joint, through tariff rates, which, among the many other things, has covered the shipments of oranges, lemons and other citrus fruits, from southern California points to certain points outside of the State of California,
190 which were reached by the respective railroads of the corporations entering into and agreeing upon said joint tariff rates, which points are designated in such joint tariff agreement or agreements on file in the office of the petitioner herein. That such joint tariff rates and the agreements creating the same have from time to time, when made by and between the railroads joining in the same, been filed with the complainant in this action, as required by law, so that the complainant at all times has been fully advised of and concerning these rates and the terms, rules and conditions upon which they were made, and the said agreements are hereby referred to and made a part of this answer.

This defendant further avers that during all the time herein referred to the joint tariff rates on such citrus fruits destined to be carried over two or more lines of railroad to any point outside of the State of California, have been very much less than the aggregate sum of the local tariffs that would be charged over the same lines for the transportation of oranges, lemons and other citrus fruits transported at local rates and not under the joint tariff.

This defendant further avers that during the years from 1890 up to 1900 a practice of paying rebates had grown up among many of the railroads not entering into the State of California, but which

were variously interested in having the oranges, lemons and other citrus fruits shipped from the State of California carried over their lines, or portions thereof, when such lines or any portion thereof could form any portion of a route over which such fruits might be shipped. That such payments of rebates were made either directly or through car line companies, to the various fruit exchanges, and other large shippers of oranges, lemons, and other citrus fruits, from southern California, and amounted to from $15 to $25 a car, and *was* paid for the routing of business over the lines of the railroads pay-
191 ing such rebates, thereby diverting the same from other connecting railroads which did not pay rebates; that these rebates were paid either directly by the railroad companies or through private car-line companies, and were received and retained by the fruit exchanges, commission houses, middlemen, and others who shipped large quantities of oranges, lemons and other citrus fruits, and were not, as a rule, as this defendant is informed and believes and charges the fact to be upon its information and belief, received by or of any benefit to the grower of the oranges, lemons and other citrus fruits, or the individual or smaller shippers. That the payment of these rebates was in violation of the provisions of the act of Congress referred to, and in direct violation of the joint tariff rates in force at the time between the parties thereto, as hereinabove stated, and were made expressly for the sole and only purpose of controlling the routing of oranges, lemons and other citrus fruits from points of connection with the lines of railroad of the defendants named in the petition, or of railroads connected therewith. That the payment of such rebates operated to the great disadvantage of this defendant and diverted from the lines of this defendant, great quantities of freight which otherwise this defendant would have hauled over its several lines of railroad. That this defendant during all of said time, constantly observed the joint tariff rates in force for the transportation of freight of the character aforesaid and refused to pay any rebates or make and diminution of the charges fixed by such joint tariff, and therefore lost a great amount of traffic which would have otherwise come to the lines of this defendant, through such refusal of this defendant to give any rebates or otherwise charge any less rates than the joint tariff rates for the shipment of oranges, lemons and other citrus fruits under such joint tariff rates. This defendant further avers upon its informa-
192 tion and belief, and so charges the fact to be, that the parties engaged in the payment of these rebates, during the time aforesaid, arranged with the fruit exchanges, commission houses and other large shippers of fruit, to pay the same direct to such parties, upon the sole condition that such parties would in routing their shipments, route the same beyond the initial lines to the lines of railroad paying such rebates. That during all of said time the defendant The Southern California Railway Company and the defendant The Southern Pacific Company, as a matter of courtesy, but not as a matter of right, permitted the shippers to route their shipments

of oranges, lemons and other citrus fruits going beyond the lines of railroad of the initial carriers over such lines as the shipper might desire the same to pass, and that by reason thereof certain large shippers were enabled to procure bids in the way of rebates as herein stated.

This defendant further avers that the great bulk of citrus fruit shipped from southern California is shipped to points over two thousand miles distant from the point of shipment. That such fruit is carried to the best advantage in cars known as refrigerator cars, which can by refrigeration be kept at a certain point of temperature when the weather is too warm for the safe transportation of such fruit without refrigeration, and such cars are also so constructed as to enable them to keep fruit contained in them from freezing when the weather is cold enough to injure or hurt such fruit by freezing if packed in ordinary freight cars; that it is to the best advantage of the traffic referred to to have this fruit remain in the cars in which it is packed at the point of shipment until it reaches its point of destination. That the cars best adapted to the transportation of this fruit are cars that are expensive and that, owing to the uncertainties concerning the quantity of fruit produced each season, the defendant companies are required, in order
193 to handle this traffic economically, to keep on hand large quantities of such cars, either through the ownership of the same, or through contracts with car companies owning them. That it is essential during the season in which the bulk of oranges are shipped from southern California to the East, to-wit, between the first of November in the fall of the year and the first of June in the summer of the succeeding year, to keep the cars devoted to such transportation on hand in sufficient quantities to take care of the traffic, and receive all shipments offered at the initial points at the time they are offered. That to enable the defendants to do this, it is necessary that cars loaded with fruit shipped over the lines of railroad connecting with the lines of this defendant should be promptly handled by such connecting lines and promptly returned to this defendant when emptied, so that this defendant can keep the requisite number on hand for the needs of the traffic at the various points in California where the traffic originates.

This defendant further avers that to prevent the cost to it of handling the traffic referred to from amounting to more than the traffic pays, it is necessary that cars used in the traffic should, to the extent that it is possible, be returned loaded with paying freight from all eastern points to which such cars may be sent, and that to enable this defendant to procure traffic with which to load such cars for the return trip, it is and has been absolutely essential that this defendant should be able, through reciprocal arrangements with its connections, to distribute the freight going over the connecting lines which has originated on defendant's lines in such a way as to procure from such connecting roads, and their allies, the utmost amount of return freight to be loaded in said fruit cars for California points,

when the same can be done without detriment to the interests
194 of the shipper and the traffic; and it is also necessary for this defendant to deal with such connecting lines as will most promptly return such cars and most promptly settle all claims made for damages against them on account of injuries to cars, or growing out of the traffic, which may arise at any time in favor of the defendants, or either of them, and in favor of shippers, and which will most promptly settle overcharges and claims of all character.

That prior to November 15, 1899, defendants named in the petition and over one hundred and fifty other common carriers of freight and passengers made and entered into a joint tariff agreement known as the "East-bound joint tariff of class and commodity rates," which was and did become effective November 15, 1899, whereby through joint tariff rates for the shipment of oranges, lemons and other citrus fruits from southern California points to all points east, north and south of California, by rail, were made, and established to certain common points in the United States to which such traffic is generally shipped, and which joint tariff rates to such common points outside of the State of California were and are less than the sum of the local rates over the different lines of roads from California to such points as the joint tariff rates apply to; and that to stop the paying of rebates, as aforesaid, and the demoralization growing out of such practice, and to permit the carriers receiving and loading the traffic referred to, at the initial points of shipment, to make such arrangement with the connecting lines as would enable them to the best advantage to have the fruit cars engaged in this traffic returned over their lines loaded with freight, and in order to enable the initial carrier to have a prompt and speedy return of such cars from connecting carriers, and a prompt and speedy settlement of all claims for damages between the carriers, or between the carriers and shippers, it was agreed by the several car-
195 riers joining in said joint-rate agreement, that as one of the conditions for the shipment of any traffic under the joint tariff rates, to any point outside of the State of California over the initial lines and any other lines connecting with such initial lines, or connecting with lines connecting with such initial lines to which shipments *was* made under such joint tariff agreement, the routing of such shipments should be unqualifiedly given to and reserved by the initial carrier. This rule was made effective on and after January 1, 1900, and pursuant to the agreement between the said common carriers, which were parties to said joint tariff, this defendant has refused and does refuse to accept or receive shipments in carload lots of the citrus fruits referred to, for points on the lines of other carriers, subject to the joint-rate agreement, at the joint tariff rate, except upon the condition and agreement that the initial carrier shall control the routing of the same, where there is more than one route, made by two or more lines, to the point of destination.

This defendant further avers, that the enforcement of this rule and practice at once ended the paying of rebates as aforesaid, and

enabled all the parties to the joint tariff rate agreement to observe the joint tariff rates without any secret cutting or reduction of the same by the payment of rebates or otherwise. That on January 18, 1900, a new joint tariff agreement was made between defendants, and the various other common carriers hereinbefore referred to, for the routing of east-bound class and commodity freight from southern California east, which also required by the agreement making such joint rate as one of the conditions upon which joint rates should be made, and maintained, that the initial carrier should have the absolute right of routing shipments to points outside of the State of California when they were reached by two or more carriers joining in the joint-rate tariffs.

196 This defendant further avers that the joint tariff rates established as aforesaid and filed with the complainant herein, and referred to in the report and decision of the complainant, attached to its petition, were based and made upon the condition (among others) last above stated. That no agreement was made or entered into between defendants and any other carrier or carriers since November 15, 1899, whereby any joint tariff rates were made, or to be made or maintained, except that they were based upon the condition stated.

This defendant further avers that the said rule reserving to the initial carrier the right to route fruit transported under the joint tariff rate is in all respects reasonable and just, and one which it is fair for said initial carrier to insist upon, as the condition for its making or maintaining joint tariff rates with connecting carriers. This defendant avers that said initial carrier is in a better position than the shipper to determine from time to time the route beyond its line over which the shipment should go to destination, as it is in a position to know and determine from time to time what connecting carrier is in the best position, and condition, at the time to receive said shipment and to handle the same expeditiously and without loss or damage. Initial carriers are interested in preventing losses or damages, if possible, even upon connecting lines, as it is frequently a difficult matter to determine beyond controversy where, in case of loss or damage, such loss or damage occurred and upon what line and how, and such initial carrier is therefore frequently called upon to participate in the adjustment of claims for losses or damages, although as matter of fact the loss or damage may not have occurred upon its line.

This defendant avers that it is necessary for initial carriers to make it a condition upon which they will enter into joint

197 tariffs with connecting lines to reserve the sole right of routing traffic, especially of a perishable nature, because of frequent disputes which arise between connecting carriers concerning the adjustments of damages claimed by shippers, and because they can ascertain quickly which connecting carriers are the fairest in their adjustment and settlement of such losses and damage claims, and which will most quickly return to the initial carrier the cars

furnished by such initial carriers for such traffic and which will best be able to reciprocate in the loading of such cars with Pacific Coast freight, in order to save the loss of returning such cars empty.

This defendant avers that it is, and always has been willing to accept from any person or persons, corporation or corporations, or bodies of any character, freight at any point in California destined to points outside of the State of California under any routing of such freight beyond the lines of this defendant, as the shipper may wish or desire to name or designate, upon the payment for transportation of the same over the lines of this defendant of the local rates established and published by this defendant for the transportation of property of the various classes of which this defendant is a common carrier, and that the only denial that this defendant has made, or is making, of the right of the shipper to route freight or property over lines to points beyond its lines, on lines of other common carriers, is the denial of the right upon such routing by the shipper to apply the joint tariffs established for the transportation of such freight or property by the agreement entered into between these and the other common carriers referred to as parties to the joint tariff agreements hereinbefore referred to.

This defendant avers that the enforcement of the order sought to be enforced by the complainant in this action would nullify
198 the joint agreement which resulted in the making of the joint tariff rates, referred to herein, and would compel this defendant, when acting as an initial carrier, to charge the local tariff rates for the transportation of any property from out of the State of California to points on lines of railroads of other railroad companies, for the reason that under the agreement between the different carriers which resulted in the establishment of such joint tariff rates there is no time fixed or limit within which such joint rates are to remain in force and effect, and each carrier to such agreement is at liberty at all times to withdraw from the same and refuse to longer be a party to such agreement as to such joint tariffs.

This defendant avers that the joint tariff schedule and agreement referred to and set forth by complainant in its said petition in this cause, containing the condition reserving to the initial carrier the unqualified right of routing as set forth in said petition ; was made, entered into and filed with the complainant by the several respective parties thereto, upon the understanding that such condition was of the essence of such joint tariff agreement. That without such condition said joint tariff agreement would not and could not have been effected. That the nature of the business of shipping various citrus fruits or products under said agreement from California to points as permitted by said joint tariff agreement, over the various routes specified therein, in connection with other transportation, is such that in order to prevent injurious, dangerous and destructive congestion of traffic at various times and points of transportation, and the losses, perils and dangers attendant thereon, and to secure to such transportation companies the rights and privileges essentially necessary to

naturally were indignant, and it was in order to prevent that state of affairs solely and for no other reason in the world than to maintain legal rates that we took the routing of this business into our own hands.

By Mr. DUNLAP:

64 Q. "Legal rates" means tariff rates?

A. Legal tariffs.

By Mr. NORTON:

65 Q. Do you mean to say that under the order of things that you describe one shipper would get a lower rate than another?

A. I mean to say that under the condition of things that existed to January 1st, 1900, there was a great discrimination, and in nearly every instance Mr. Earl received better rates than any of his neighbors did.

66 Q. And am I to understand from the statement that you have made as to how Mr. Earl and the other car lines disposed of the business, that they controlled the routing?

A. The routing was left in their hands largely by the people whose business they handled.

67 Q. That is to say, the shippers turned over their business to the car lines for a consideration?

A. Yes.

223 68 Q. The consideration being this rebate?

A. Being the portion of the rebate that Mr. Earl received. He made the best terms he could with them.

69 Q. With the shippers?

A. Yes. In some instances the shippers got possibly all there was in it. In other cases they got a small portion of what Mr. Earl received, but they were mad and they did not like it. They said it was placing their competitors on a basis that was not fair to them. All of them were indisposed to accept that situation, and it was very unsatisfactory to our company and it was to them.

70 Q. Then do I understand that after making the best terms he could with the shippers for a consideration, he went to the connecting carriers and made the best terms.

A. Sold his business to the highest bidder.

71 Q. And sent it over such connecting carrier as would do the best?

A. As would do the best.

72 Q. And not over the connecting carrier that some shipper might want to have used?

A. That is right. In some instances it may be that some of the larger shippers in California had their own arrangement outside of Mr. Earl.

73 Q. But generally speaking, you have described the situation?

A. Generally speaking I have described the situation. And I want to add that the chief reason or chief objection on the part of

shippers to our taking the routing in our own hands was that they were no longer able to sell the business and get rebates.

74 Q. They made those objections, did they?

A. They made those objections. They admitted it privately to us.

75 Q. You stated a moment ago, as I understand, that your sole object in assuming the control of the routing was to put an end to this rebate and cutting of the legal published tarriffs?

A. Yes.

76 Q. State what steps you took toward doing this?

224 A. Well, before doing that we took it up with all of our connections, and they all subscribed——

77 Q. You mean your eastern connections?

A. Our eastern connections; and they all recognized the importance of the—they all recognized the situation. They all knew that rates had been badly demoralized, and they all consented to leave the routing of the business in the hands of the initial lines.

78 Q. On what, if any, condition did they consent to your routing the business?

A. On the general statement from the Southern Pacific and the Atchison that the business would be divided among their eastern connections fairly.

79 Q. Did you put a joint tariff into effect at that time?

A. The joint tariff that we published at that time.

80 Q. What conditions or terms, if any, were there in the joint tariff with respect to citrous shipments?

A. The tariff was published subject to the right of the initial carriers to route the business east of their rails.

81 Q. You mean that was a condition made?

A. On the rate.

82 Q. Of getting the through rate?

A. That was the condition of the through rate, accepted by all of the connections.

83 Q. What connections accepted this?

A. All of them.

84 Q. All that are mentioned in the tariff?

A. All that were mentioned on the tariff, and those that were not mentioned on the tariff.

85 Q. What companies were allowed to participate in this if there was any division made?

A. The transcontinental tariffs have only the names of the lines west of Chicago, as I remember. The names of the lines east of Chicago do not appear on this tariff.

86 Q. You did not understand me, and I will have to lead you a little there. I want to know whether you published a joint

225 tariff with any other road with which you had not previously had an understanding that it would maintain the joint rate.

A. I understand not, no. We made that a forerunner of publishing the tariff with them, and it was distinctly understood, as I re-

member now, that absence of that consent meant that the name of that company would be left off the tariff.

By Mr. CALL:

87 Q. I would like to enquire, if you will permit me, for information and for the record. There are in evidence in this case several joint tariffs, among others what is called the orange tariff.

A. Citrous fruit tariff.

88 Q. Yes, the citrous fruit tariff; and those tariffs contain the names of a large number of roads participating in the tariff?

A. West of Chicago.

89 Q. And those were west of Chicago.

A. They are members of the Transcontinental Association. That is as I recollect, Mr. Call.

90 Q. You are now referring to roads east of Chicago also participating in the tariff?

A. No, the roads east of Chicago were, all of them, not on the tariff at all. That is what I was trying to make plain, that their names are not on the tariff, as I recollect now. Maybe I am mistaken about that. It don't make any difference any how. It is immaterial, is it not?

91 Q. Well, perhaps it is immaterial but it is a fact that I would like to know about. Of course I can examine perhaps and see.

Mr. DUNLAP: The tariff will show.

A. I am not in close enough touch with the tariffs to testify in regard to that matter.

By Mr. NORTON:

92 Q. Well, regardless of that point, this is what I desire to get at, Mr. Morton: Whether all roads that participated in the
226 joint through rate were under any obligation to maintain that rate; that is, to say, not to cut it by rebates or other indirect means.

A. There was a general understanding, so far as the roads east of Chicago are concerned, that if any of them cut the rate after the first of January they would be deprived of business.

Mr. DUNLAP: "Cut it," how; by rebate?

By Mr. NORTON:

93 Q. What do you mean by "cut it"?

A. I can't explain any more. If you don't understand I can't explain it. You know what cutting a rate is, don't you?

94 Q. I wanted to get the explanation on record. By giving a rebate you mean?

A. Certainly. This cutting of rates was all done secretly. There was no publication of tariffs or anything of the kind. It was all in violation of the interstate commerce act.

95 Q. And in violation of your published tariff?

A. And in violation of our published tariff.

96 Q. That is what I wanted to get at. Now, you stated that the sole purpose of assuming control of the routing was to do away with the condition that you have described?

A. That was, I won't say the sole purpose, but the chief purpose. I might say the sole purpose was to maintain our rates.

97 Q. The reason I ask is this: There is a suggestion in the opinion of the Interstate Commerce Commission that the assuming of the right to route may not have been in good faith; that it might have been for the purpose of controlling or helping in the control or establishing of pools between connecting lines. I want to ask you directly whether it was for any such purpose that you assumed control of routing?

A. Well, after a very careful canvass of the situation in southern California——

98 Q. The connecting lines, I mean, east of Chicago; connecting carriers?

A. No, there was no pool or understanding of any charac-
227 ter that could be distorted into a pool of the business east of Chicago or east of St. Louis. They have nothing to say about it. Those lines, I don't think they acquiesed in the position that the western lines took.

99 Q. Do they know anything about the division of business that they get?

A. No, only as they receive it.

100 Q. They take what they can get?

A. They take what we give them.

By Mr. CALL:

101 Q. They can find out at the end of the year what proportion they are getting, can't they?

A. Not necessarily what proportion they are getting. They can find out from their own books what they have had, but they cannot find out what other lines received.

102 Q. They can find out what the whole amount is and what part they are getting, and from that they will know what part they are getting of the whole?

A. No, that is impossible, Mr. Call, because there may be 30,000 car loads of oranges raised in California, and there is nobody here knows how many of them go east of Chicago or into territory served by the trunk lines. There may be one year half west of Chicago and another year sixty per cent.

103 Q. They can compare what they get one year with what they got in former years?

A. Yes, they can compare with their own figures, but so far as I know there is no inter-change of statistics between eastern lines as to how many cars of oranges one line receives and how many cars another receives.

104 Q. You receive complaints that sometimes certain lines are not getting their share?

A. We have had very few complaints from our eastern connections that they were not getting their share of the business. The business has been divided on the basis of equity and justice with them.

105 Q. And the amount they were getting before——

228 A. We have tried to give the lines that performed the best service the most business.

By Mr. NORTON:

106 Q. You started, Mr. Morton, to tell what the considerations of the division are and about the lines that handled it the best. State generally what elements control in apportioning this business among the eastern connections?

A. Well, it is good service chiefly.

107 Q. Chiefly good service?

A. Yes. We give the business going to Pittsburg to the line which can take it to Pittsburg most expeditiously. We give the business going to Detroit to the line that can handle it to Detroit the quickest; and the business is divided all through on the basis of good service. We must get good service from our eastern connections in order to get our share of business in California which we are always looking after.

108 Q. From your general position you are able to tell at all times what road is best equipped and prepared to do the business, I assume?

A. Yes, and then the question of returning our cars, getting them back so as to get them ready again, is another question.

109 Q. But so far as any agreement with your eastern connections ic concerned or any understanding that any eastern connection shall have one per cent. or fifty per cent., what is the fact?

A. There is absolutely no agreement whatever of any kind with any of our eastern connections. Some of our eastern connections—I have in mind one of our eastern connections that has better facilities at one particular point than the other connections have are favored to such points. That is, they have gone to a large expense and arranged an orange receiving house. That, of course, is considered, and so far as we can, we have followed the inclination of the shipper too. There has been nothing hide-bound about this matter.

110 Q. As you state that there is no understanding that

229 you know of between the initial carriers or the Santa Fe Companies and Southern Pacific and their eastern connections, I will ask you whether there is any agreement or understanding if you know between the eastern connections themselves as to a division of this business?

A. I think not. Otherwise we would have been advised of it and have been asked to help them carry it out as far as possible and we have had no such request.

111 Q. Now, you have stated the purpose of taking into your hand the routing of this citrous business, namely, the stopping of rebates and this secret cutting of the published tariff rates. Was this stopped?

A. It was.

112 Q. Definitely and fully?

A. Absolutely.

113 Q. And in the opinion of the Interstate Commerce Commission the statement is made that it is not clear how that would stop it. Could you illustrate or explain how?

A. Well, every connection was given to understand that in case they were found offering concessions for this citrous fruit business after the first day of January, 1900, that we would see to it that the business was diverted from their lines; and I remember going so far as to say that if I found anybody cutting our through rates secretly after the first of January, 1900, that we would not only divert the citrous fruit business from them but we would take away other business; that it was our intention that the published tariff rates should be absolutely maintained. And that was done in the interest of the small shipper and in the interest of not having any discrimination in that business.

By Mr. DUNLAP:

114 Q. If the initial carrier assumed the routing of the shipment, the connecting carrier would be in no position to bid for the business of a connecting line, would it?

A. No. When we took the routing of this business into our hands the eastern connection had to do business with us instead of the car company or the shipper.

230 By Mr. NORTON:

115 Q. Now, the commission make the point in its opinion that this routing does not appear to be reserved of any other business of the carriers. I will ask you to state whether there is any other business whose routing you direct as initial carrier?

A. I am of the opinion that this same rule should apply to all business, and I have so advocated, and I think it would prevail to-day if it had not been for the fact that this case was before the commission. Some of the railroads involved in this case say that they prefer, before going any further in that direction, to wait until this matter is definitely settled.

116 Q. The point I desire to get at by the question is whether the condition in which the citrous fruit business was in January 1900, was in any way different from the conditions as to other traffic?

A. The business was somewhat different because it was concentrated to a large degree in the hands of these car companies.

117 Q. Was there any other business in which rebates were paid as they were paid in this?

A. Yes, rebates were paid on other business, on dried fruit busi-

ness, and I advocated taking the same measures in regard to the dried fruit business and the other business out in that country that we took on the citrous fruit business, because I believed that we were responsible for the rates and that we should see that our connections had to maintain them.

By Mr. CALL:

118 Q. Did you never take control of routing on any other freight than citrous fruit?

A. Yes, we did. We took absolute control of a good deal of freight along the line of our road, locally in Arizona and New Mexico, and subsequently diverted the freight from eastern connections where we thought rates had been cut.

119 Q. Well, you did that with reference to other than local freight?

A. No, we did not, because we did not control other than local freight.

231 By Mr. NORTON:

120 Q. There was as I understand it, no other business?

A. In order to get competitive business we generally had to do as our neighbors were willing to do, or go without.

121 Q. If I understand your testimony there was no other business of the magnitude of this in which the cutting was as general as in the citrous fruit business?

A. No. This business to a large extent, you know, was concentrated. The eastern lines in touch with Earl or with Armour——

122. Mr. DUNLAP: Through certain car lines.

A. (continued). Through certain car lines—covered a large proportion of the business.

123 Q. That was not true of any other business?

A. That was not true of any other commodity.

By Mr. NORTON:

124 Q. That made the manipulation of this business more easy than of business generally?

A. That is right.

125 Q. Now, since January 1st, 1900, I should like to know whether in the handling of the citrous fruit business you have given any undue preference or advantage to any orange shipper over another?

A. Suppose, before I leave that, I finish that point.

126 Q. Yes.

A. Just after this action we had a meeting of the citrous fruit people of southern California in Los Angeles. and we told them then that we thought that this change in the routing—that is, the taking up of the right to route by the carriers and depriving the shippers of the right to route—was the beginning of the end of the private car lines, which were so very distasteful to the people of southern

California, and the fact that Mr. Earl a year afterwards sold out proved that we were correct in the premises. Now, since January 1st, 1900, since the elimination of the private ownership in the car lines, especially Mr. Earl's, there have not been any complaints at all in regard to discriminations. One shipper has had the same right that others have had.

232 127 Q. You have had but one rate?

A. The same rate has applied on all business. Equal rates have prevailed.

128 Q. Has there been any discrimination or any undue preference or advantage as to one locality over another?

A. I think not.

129 Q. Since Mr. Earl disposed of his car line the Santa Fe Companies are running their refrigerator cars?

A. We had a contract, the Southern Pacific and ourselves had, with Mr. Earl and Mr. Armour whereby we could put certain cars into the California fruit trade and they would put certain cars into the California fruit trade, and the Southern Pacific was also a party, although they had no cars of their own; they were also a party to our contract, although they had no cars of their own. We promised the people of southern California that when those contracts expired—and they expired a year ago last November—that so far as we were concerned we would supply our own cars for that traffic and entirely eliminate Mr. Earl and Mr. Armour, which we did.

130 Q. Well, it would have been cheaper as an operating proposition for you, would it not, to have rented cars than to furnish your own equipment?

A. I think that is a question that is debatable.

131 Q. You thought so at the time?

A. Originally?

132 Q. Yes.

A. Yes, but we have furnished our own cars now; we have invested in cars for this especial trade in the neighborhood of four millions of dollars.

133 Q. And this investment would not have been made, do you mean to say, without the demand of these shippers?

A. No, I cannot say that, because I always sympathized with the shippers in their demand that the railroads should furnish their own equipment, and I had very little sympathy with any arrangement whereby there was a profit in furnishing cars for this business by private individuals. If there was any profit in the car business I thought the railroads should have it.

233

134 Q. You stated that you mentioned at a meeting of fruit growers in Los Angeles that the conditions would be remedied, that the cutting of rates would end, and that eventually you would own your own cars. Was that the meeting presided over by Mr. Slauson do you remember?

A. Yes, and I think you have a record of that meeting.

135 Q. Yes, that is the reason I want to identify the meeting.

United States circuit court at Los Angeles, California, the witnesses and counsel for the parties to have an opportunity to examine and correct the testimony.

All testimony is to be subject to all legal objections.

215 The said PAUL MORTON, a witness produced on behalf of defendants, having been first duly sworn to testify the truth, the whole truth and nothing but the truth in the above entitled cause, deposes and says:

Direct examination by Mr. T. J. NORTON:

1 question. State your name.

Answer. Paul Morton.

2 Q. And your occupation.

A. Second vice president of the Atchison, Topeka and Santa Fe system.

3 Q. What are your duties as second vice president of the system?

A. I am in charge of looking after the commercial interests of the road.

4 Q. Does that cover freight and passenger traffic?

A. Freight and passenger traffic both.

5 Q. You speak of the Atchison, Topeka and Santa Fe Railway system. Does that cover the names of the three defendant companies mentioned in the appearances?

A. It does; it includes them.

6 Q. Were you acting in the capacity of second vice president in 1900 and prior thereto?

A. I had charge of the business at that time. My title was changed from third to second vice president.

7 Q. You have been in charge of the system traffic since that time, 1896?

A. Yes, sir.

8 Q. I will ask you whether you are familiar with the citrous traffic business of the Santa Fe system, originating in southern California?

A. I am.

9 Q. And were you familiar with that business in 1900 and prior thereto?

A. Yes, sir.

10 Q. State whether you have knowledge of the manner in which the citrous fruit shipments out of southern California were handled previous to 1900 and subsequent to 1900.

A. I have.

216 11 Q. How were they handled with respect to routing before 1900?

A. Prior to January 1st, 1900, citrous fruit shipments were routed by the consignor.

12 Q. And since January, 1900?

A. By the initial carrier.

13 Q. Are you familiar with the change as to routing that was made?

A. I am.

14 Q. When was that? January 1st, 1900?

A. January 1st, 1900.

15 Q. Did you have anything to do with the change of the practice as to routing?

A. I approved of it.

16 Q. And for what reason was the change made?

A. Well, the change was made for many reasons. In the first place, the citrous fruit business of California to a very large degree was being handled by the fruit companies interested in private car lines, and it was very unsatisfactory both to fruit growers and fruit shippers who did not have cars of their own. We had a great many protests from the citrous fruit men against their fruit being shipped in cars belonging to their competitors in the fruit business, and they besought us at various times to supply other cars for them to ship their fruit in than the cars belonging to Earl and Armour.

17 Q. You were using the Earl cars?

A. We were using the Earl cars.

18 Q. Were you using the Armour cars?

A. We were using the Armour cars, and we were using our own cars. To show you the pressure that we had against us at that time, I will read you a letter if you wish.

19 Q. From whom?

A. From one of the shippers out there.

20 Q. From whom is the letter?

A. From the Ontario and Cucamonga fruit exchange.

21 Q. At what place?

A. North Ontario, California.

22 Q. Is that the original letter (indicating letter in hands of witness)?

A. This is the original letter.

217 23 Q. Addressed to you?

A. Addressed to Mr. Chambers.

24 Q. Who is Mr. Chambers?

A. Mr. Chambers is really my representative in the freight business in southern California, the general freight — of the Southern California railroad.

25 Q. Received in due course of mail by your freight department?

A. Received in the regular course of business.

26 Q. You may read the letter.

A. (Reading:)

Mr. Edward Chambers, general freight agent Santa Fe Railroad Co., Los Angeles, Cal.

DEAR SIR: This is to call your attention to the fact that in recent shipments of holiday freight I was forced very much against my will to use two C. F. X. cars. In making this known to you I desire

to say that my objections to the use of these cars are: First, that they belong to my competitor in the fruit business; he has access to the records and knows when each and every car leaves California and its destination. Second, I object to paying tribute to my opponent, who by reason of the unfair advantage thus gained over me is able to cut the markets to my utter ruin, which is something he is notoriously engaged in.

I regret very much the necessity of writing you thus, but the matter seems to be so flagrantly wrong that I am forced to do so, and appeal to you for protection in the future. My shipments are all from Casa Blanca, Riverside county, California, and I have yet got some 25 cars to move. Hoping this will meet with your favor, I beg leave to subscribe myself,

Yours very truly, JAMES L. PAUL,
Fruit Association of Riverside, Cal.

I was mistaken. He wrote on this letterhead, and I presumed that the letter was, but it does not seem to be, from the Ontario Cucamonga fruit exchange. So if you will eliminate that first I would like to have you do so.

218 Counsel for complainant waives the introduction of the original letter in evidence, and accepts the copy read instead, subject to all objections.

27 Q. Now, Mr. Morton, I will ask you to state whether that is an example of any other letters that you have received of like tenor?

A. The protest was general.

28 Q. Do you mean to say that you received many letters of that character?

A. We have many letters of that character, and this had been the case for a long time preceding this action of ours.

29 Q. January 1, 1900?

A. Yes.

30 Q. Well, you mention that as one of the reasons why the change of routing took place?

A. The routing to a large extent prior to this change, while apparently in the hands of the consignor, was in the hands of the owners of these private car lines.

31 Q. You mention the C. F. X. car line. What is that?

A. The Continental Fruit Express, which was owned by Mr. Earl.

32 Q. And in use on the Santa Fe System lines?

A. In use on both the Southern Pacific and Santa Fe lines; and the Fruit Growers Express, owned by Armour Company, the cars of which were also used by both the Santa Fe and the Southern Pacific.

33 Q. Were the Armour cars objected to for the reason mentioned in this letter?

A. Not to the same degree, because the Armour Company was not at that time in the fruit business.

34 Q. But the C. F. X. or Earl cars were objectionable?

A. Mr. Earl, the owner of the C. F. X. cars, was actively engaged in the fruit trade.

35 Q. Well, how could the action that you took in January, 1900, the exercise of that power of routing, have anything to do with eliminating the trouble referred to in the letter you read?

A. Mr. Earl, on account of the large business that he controlled himself and on account of owning and to a certain degree
219 directing the movement of these cars in which other people's fruit was loaded, sold the business to the highest bidder——

36 Q. To what company?

A. And the object——

37 Q. I was just going to interrupt you there to ask who were the purchasers?

A. The purchasers were eastern connections.

38 Q. Railroad lines?

A. Connections of the Southern Pacific and Atchison, Topeka and Santa Fe.

39 Q. Do you mean connecting carriers?

A. Connecting carriers.

40 Q. You may explain then how the car company, the C. F. X. Company represented by Earl, sold the business as you put it.

A. When I say sold the business I mean that the line that would give them the largest rebate——

41 Q. Railroad line.

A. The railroad line that would give them the largest rebate secured the business.

42 Q. How did the C. F. X. or Earl Company have the business to sell? How did it acquire it?

A. They owned their cars, and in many instances they would divide what they received with the shippers, I suppose.

43 Q. Illustrate how the car company was able to control the business and how it disposed of it and how the proceeds were divided, if you know.

A. Well, the Earl Company—Mr. Earl would come to Chicago, and he would make the best trade he could from Chicago to New York.

44 Q. With whom?

A. With the railroads running from here to New York.

45 Q. Connections of the Santa Fe?

A. Connections of the Santa Fe and connections of the Southern Pacific. He would make the best trade he could east, with the connections of the Southern Pacific, which might be at El Paso, and it might be Ogden or at the Missouri river or at Denver, and then it was he would offer the shippers perhaps five dollars a car, or one-third or one-half or one-quarter of what he received himself.
220 46 Q. Received from whom?

A. Received from these railroads.

47 Q. What did he receive from the railroad company, if you know?

A. He received money.

48 Q. Do you know in what form it was returned to him?

A. No, I do not. In various forms.

49 Q. How much a car was it, if you know?

A. I should say it varied from ten to forty dollars.

Mr. CALL: Is Mr. Morton speaking from his own knowledge?

Mr. NORTON: From his knowledge.

Mr. CALL:

50 —. Did you assume the truth of the matter you were speaking of then?

The WITNESS: What do you call your knowledge?

Mr. CALL: That that you personally know of.

The WITNESS: Mr. Earl's statement to me was—he came to us, you know, after he came to others. He tried to make the same deal with us. Now, is that my own knowledge?

Mr. CALL: Well, that would be received against Mr. Earl, no doubt, but I just wanted to know what the source of knowledge was.

A. That is my own knowledge, because if we did not do the same thing we did not get the business. I think that is my own knowledge. It is not any secret; it was general information among the insiders as to what was going on.

Mr. DUNLAP:

51 Q. Notorious information?

A. It was notorious.

By Mr. NORTON:

52 Q. Mr. Earl, then, as I understand you, and the other car companies in like manner, made an arrangement with your connections east of Chicago and the Southern Pacific connections east of its different termini, to give the car company, Mr. Earl's company, and others a certain bonus per car in consideration of——

A. Receiving the business.

53 Q. (continued). —of the car being routed over the line of the purchasing railroad company.

A. That is right.

54 Q. Is that your statement?

A. Yes.

221 55 Q. I wish you would explain how that practice, if it did at all, injured the traffic business of the Santa Fe system which you represented.

A. Well, it injured us very directly.

56 Q. Explain, taking an example just to make it clear.

A. The rate from Riverside, California, to New York city is $1.25 per 100 pounds of oranges in car load lots. The connection of the Southern Pacific between Ogden and the Missouri river would pay $15 per car, and the connection between the Missouri river and Chicago would pay $10 a car. That was $25 a car that the Atchison railroad would have to pay or forego the business. It did not make any difference to the Atchison system whether the cut in the rate was entirely west of Ogden or whether it was east of Ogden or at El Paso. It made no difference to it whether the cut was made by the Southern Pacific or by some connection of the Southern Pacific. So far as the cuts in the rate east of Chicago were concerned, we generally were able to secure for oranges moving over our line the same concession that was made on oranges originating on the Southern Pacific coming east by the Southern Pacific. Do I make myself plain?

By Mr. CALL:

57 Q. How did you secure those same concessions?

A. By going to an eastern line and saying that we understood Mr. Earl had such and such deals, and we wanted them——

58 Q. You wanted them to do as well by your line?

A. We wanted them to do as well by our line as they had done by other connections.

By Mr. NORTON:

59 Q. What concession do you speak of? The division of the through rate?

A. I mean a concession from the regular proportion of the rate east of Chicago. Now, the last year——

By Mr. DUNLAP:

60 Q. The division of the through rate, do you mean, affected your proportion of the through rate?

A. How do you mean?

222 61 Q. I do not understand what you mean by concession.

Mr. CALL: I understand he says a reduction was made by the connecting lines, from the regular rate.

A. (continued). They paid us for the business, and in turn we paid the shipper what we received from the connecting line.

By Mr. NORTON:

62 Q. That was through your car company?

A. That was through our car company.

63 Q. Well, we will get to that a little later, I think.

A. Now, it cost our car company the last year, the year preceding 1900, quite a large amount of money to meet this competition, and shippers in southern California who did not get the full benefit of this reduction and who had to divide it with Mr. Earl and others,

186 Q. How does the schedule time east of Chicago compare during the last two years with the time prior to 1900?

A. I could not tell you except in a general way. I know the time east of Chicago has been anything but schedule in the last two years because there has been such a congestion of business that it has been almost impossible for the railroads to make time.

187 Q. On any kind of business do you mean?

A. On any kind of business, although I believe that the citrous fruit business has had the preference always.

188 Q. How long has the present rate on citrous fruit of $1.25 a hundred from southern California to points east of the mountains been in force?

A. The rate of $1.25 per 100 pounds from Los Angeles to Chicago also applies to practically every point in the United States, including Portland, Maine, New York city and Jacksonville, Florida, and it was originally made quite a long time before I came to the Atchison railroad, for the purpose of encouraging an infant industry. It was considered a very low rate then.

189 Q. When was that?

A. Well, I testified to starting in January, 1896. It was considered a very low rate then, and it is still considered by people who are expert in the business, as a low rate.

190 Q. Well, has there been any reduction in that rate since it was put into force?

A. No, the rate was originally made as low as possible.

242 191 Q. That is the rate in force on the Santa Fe system and also the same rate which is on the——

A. On the Southern Pacific.

192 Q. A joint rate?

A. It is a rate which was made by mutual agreement, and I think was in effect before the interstate commerce law became effective.

By Mr. DUNLAP:

193 Q. Was not the original rate $1.50 a hundred?

A. Possibly it was. I think Mr. Stubbs said it was $1.25.

Redirect examination by Mr. NORTON:

194 Q. I will ask you to state whether since you took the routing in your hands January 1st, 1900, it is true or not as numerous witnesses have stated, that they cannot divert their fruits so readily as they did before when they, as they claim, controlled the routing themselves.

A. The best answer that I can give to that is to say that last year out of a total of 11805 cars 7400 cars were diverted from the point of originally billed destination. Many of these cars were diverted two or more times, the average being approximately 1.8 times, aggregating a little more than one diversion for each car shipped. That is something you do not know about, the cost of telegraphing

in connection with these diversions and the work and labor that there is attached to the accommodation. We started in, you know, at one time to charge $2.50 a car for each diversion, and if we had charged $2.50 a car we would have collected over $25,000 last year.

By Mr. CALL:

195 Q. I will ask you if you can state what the total number of cars of citrous fruit was shipped from southern California last year?
A. Yes, I can. Our records show that there were last year 20,748 cars.
196 Q. And your company carried how many?
A. We carried 10,758 cars.
243 197 Q. That is just about half?
A. Well, about 55 per cent. The Southern Pacific carried 9,990 cars. We carried pretty nearly a thousand cars more than they did.

The further taking of these depositions is by agreement adjourned until Wednesday, January 6, 1904, at 9:30 a. m.

244 WEDNESDAY, January 6th, 1904.

Parties met at 9:30 a. m. this day pursuant to adjournment. Present: Same as before.

The said C. B. STROHM, a witness produced on behalf of defendants, having been first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes and says:

Direct examination by Mr. NORTON:

1 question. What is your name?
Answer. C. B. Strohm.
2 Q. And your occupation?
A. Agent and superintendent of terminals at Chicago.
3 Q. Of what companies?
A. Atchison, Topeka & Santa Fe railway.
4 Q. How long have you been in that occupation?
A. Since August, 1896.
5 Q. What are your duties as superintendent of terminals?
A. I have charge, as superintendent of terminals, of the making up and breaking up of trains, all the switching and maintenance and all kinds of work of that kind.
6 Q. Do you have anything to do with the receipt and discharge of freight?
A. Yes, as agent I have full charge of all the station work.
7 Q. Is all freight that is sent to Chicago received under your care?
A. Yes sir.
8 Q. I will ask you to state whether you have in that capacity

kept any record of the receipts of citrous fruits from southern California during your service as superintendent?

A. Yes sir, I have.

9 Q. Can you tell what the number of cars of oranges and citrous fruits have been for say five years beginning with 1899?

A. Yes, I made up some figures from the station records on this matter.

245 Mr. CALL: I will ask the witness to state clearly what cars he is referring to, whether cars hauled by the Santa Fe or the whole number of cars.

Mr. NORTON:

10 Q. The cars that came in by the Santa Fe, on the Santa Fe lines; is that correct?

A. Yes sir, these cars came in over the Santa Fe lines from California.

11 Q. How many cars of citrous fruit were received in 1899 in Chicago over the Santa Fe lines? (Handing memorandum to witness.)

A. The figures I have made up were for the months of March, April and May.

12 Q. Your figures cover the months of March, April and May of each year?

A. Yes.

13 Q. And relate to the citrous fruit from southern California?

A. Yes. There is another memorandum there that I will get. This only shows the cars unloaded here. (Another memorandum handed to the witness.)

14 Q. How many cars of southern California citrous fruit were received over the Santa Fe lines in the months mentioned of 1899 in Chicago?

A. 616 cars.

15 Q. Can you tell how many of these 616 cars were unloaded in Chicago and how many were diverted elsewhere?

A. 305 were unloaded on our tracks in Chicago and 311 were diverted East.

16 Q. How many were received in 1900 in the months mentioned?

A. 766 cars.

17 Q. How many were unloaded in Chicago?

A. 412.

18 Q. How many were diverted?

A. 354.

19 Q. In 1901 how many cars did you receive?

A. 1037.

20 Q. How many were unloaded in Chicago?

A. 465.

21 Q. And how many diverted?

A. 572.

22 Q. By "diverted" you mean to eastern points?
A. Yes sir.
246 23 Q. In 1902?
A. 621 cars received.
24 Q. How many unloaded here?
A. 317.
25 Q. And how many diverted?
A. 304.
26 Q. And in the last year, 1903?
A. 931 received.
27 Q. How many unloaded here?
A. 505.
28 Q. And how many diverted?
A. 426.
29. Mr. CALL: That all relates to the months of March, April and May?
A. Yes sir.

By Mr. NORTON:

30 Q. That makes a total of how many received all together in those three months?
A. During the three months for those five years 3971 cars were received, of which 2004 were unloaded on our tracks and 1967 diverted East.
31 Q. During what months of the year are the heaviest receipts of citrous fruits?
A. During the above months, March, April and May.
32 Q. In making your figures you took those as the months best representative of the business done?
A. Yes.
33 Q. Now, are you able to tell, as to the citrous fruit from southern California received in Chicago over the Santa Fe lines, what length of time it remained upon your tracks before being unloaded or before being diverted to other points?
A. Yes, I have worked up that information from our records.
34 Q. The information that you prepared covers what periods what part of the year?
A. March, April and May.
35 Q. The same months that you mentioned before?
A. Yes sir, 1899 to 1903, inclusive.
36 Q. In the three months mentioned of 1899 what showing have you?
A. In 305 cars unloaded on track there were——
37 Q. 305 were unloaded you mean?
A. Yes.
38 Q. And how long were the 305 cars delayed on an average if you can tell, before unloading?
A. They were delayed on an average 7½ days. That is not counting the day of arrival.

247 39 Q. In 1900, in the months mentioned how many cars were unloaded on your track?

A. 412 cars, and they were delayed on an average 6.49 days.

40 Q. In 1901 how many cars were unloaded on your tracks?

A. 465.

41 Q. And what was the average delay in unloading?

A. They were delayed on an average 5 days.

42 Q. In 1902?

A. 317 cars, delayed on an average 5.81 days.

43 Q. In 1903?

A. 505 cars, delayed on an average 6.28 days.

44 Q. In the five years mentioned how many cars have you unloaded all together?

A. 2004 cars, delayed on an average 6.14 days.

By Mr. CALL:

45 Q. That last figure relates to Chicago cars or diverted.

A. Chicago cars.

By Mr. NORTON:

46 Q. Chicago cars unloaded here. And this all relates to citrous fruit from southern California over the Santa Fe line.

A. Yes.

47 Q. Can you state how long the cars that were received here and not unloaded on your tracks but diverted were delayed before being diverted?

A. They were held on an average about the same length of time.

48 Q. And how long, if you can tell, have cars been held here before being unloaded or before being diverted?

A. In making up these figures I have found cars delayed as long as thirty-eight days.

49 Q. These delays that you have spoken of, both as to cars unloaded here and as to cars diverted, were occasioned by handling by the consignor or consignee, or by you?

A. They were delayed waiting for orders from the consignee as to what to do with the freight.

248 50 Q. What I want to put directly is whether these delays were caused by you in any way?

A. No sir.

51 Q. The delays in cases of diversions would be due to the inaction of the consignor?

A. Yes, in most cases.

52 Q. The consignor does the diverting as a rule doesn't he—the shipper?

A. Yes sir.

53 Q. The requests for diversions come from southern California?

A. Yes sir. The receiver here might have a car that he could

not dispose of here, and he would ship it East. Otherwise it would come from the shipper.

54 Q. Those are comparatively rare?

A. Yes, those cases.

55 Q. Now, what attention do you have to give to those cars that are held upon your tracks here, if any?

A. Well, it depends a good deal on the weather. In the winter time we have to see that they are kept from freezing, as far as possible, protected from the cold weather.

56 Q. How do you protect them from the cold in the winter?

A. We have car heaters, Economy car heaters.

57 Q. What are they; oil stoves?

A. They are a sort of salamander or oil stove, and we put them in the ice tanks of the cars.

58 Q. In the severe weather?

A. In the severe weather.

59 Q. How many of those do you have in use?

A. We have 75.

60 Q. Have you ever at any time had them all in use at one time?

A. Yes, we have, and even then we did not have enough.

61 Q. What did you do with other cars that needed heat?

A. We had to put some in the round house, and we had to change from one car to another, change the stoves around in order to heat them all. We have had as high as 125 cars at a time to take care of.

62 Q. Is the need of this care common in the winter months, cold weather?

A. Yes sir.

249 63 Q. What examinations do you make of the cars and how frequent?

A. Every day we have to open them and take the temperature and examine them and see that they are kept in good shape.

64 Q. Is any charge made by you for this daily examination and for this heating and care through the cold weather?

A. No sir.

65 Q. That is all gratuitous?

A. Yes.

66 Q. What about looking after the ventilation of the cars while they are here?

A. Well, at other times of the year when the weather is not cold enough to require heat in the cars this fruit is received under ventilation, and sometimes ice. When it is received under ventilation we have to look after them just the same, and examine them daily and open and close the ventilators according to the temperature, and open the side doors in order to cool them off when the weather is hot.

67 Q. So that in both cold and warm weather they require the special attention?

A. Yes sir.

Cross-examination by Mr. CALL:

68 Q. In the joint tariff filed by the defendant carriers in connection with other roads there is a rule providing in effect that no diversion of citrous fruit shall be made without the consent of the initial carrier. Are you familiar with that rule?

A. No, I am not. Diversions are received from the general office.

69 Q. Your orders for diversions all come through your general office?

A. Yes.

70 Q. The Santa Fe Railway Company has also had a regulation to the effect that no diversion shall be made unless requested while the fruit is west of Chicago, has it not?

A. I cannot say.

Mr. NORTON: I object to the question because if there was such a rule the rule itself would be the best evidence.

By Mr. CALL:

250 71 Q. I want to inquire of the witness whether you are familiar with such a rule?

A. What is the question?

72 Q. State whether you are familiar with such a rule or regulation?

A. I am not familiar with such a rule, and it is not the practice entirely.

73 Q. Well, has it not been practiced heretofore with general uniformity during past years?

A. No sir, I think not.

74 Q. Can you say whether there is any such rule in writing or upon any of the tariffs which have been promulgated by the company?

A. I cannot. I have not seen anything of the kind.

Mr. CALL: That is all.

Mr. NORTON: That is all.

It is stipulated that the signatures of both the witnesses Paul Morton and C. B. Strohm are waived.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Wilson E. McDermut, a notary public in and for the said county and State, do hereby certify that the above and foregoing testimony of Paul Morton and C. B. Strohm was taken by me in shorthand at the time and place stated and in pursuance of the stipulation therein referred to, and that the same has been correctly transcribed by me, and that the foregoing testimony is a true and correct transcript of my notes of the testimony given at said time and place by said witnesses, and that the said testimony has been read over by said witnesses and found to be correct; and that the said Paul Morton and C. B. Strohm were each, before the taking of their testimony, duly cautioned, examined and sworn by me to testify the truth, the whole

truth and nothing but the truth touching the matters which should be inquired of them in the foregoing cause.

In witness whereof I have hereunto set my hand and
251 notarial seal this 11th day of January, 1904.

WILSON E. McDERMUT,
[SEAL.] Notary Public, Cook County, Illinois.

My commission expires February 26, 1906.

Notary fees for these depositions	$33.00
Postage	.25
Clerk's certificate	.25
	$33.50

Paid by defendant Atchison, Topeka & Santa Fe Ry. Co.
WILSON E. McDERMUT, Notary Public.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Peter B. Olsen, county clerk of the county of Cook, do hereby certify that I am the lawful custodian of the official record of notaries public, of said county, and as such officer am duly authorized to issue certificates of magistracy that Wilson E. McDermut, Esq., whose name is subscribed to the certificate to the annexed deposition, was, at the time of signing the same, and is now, a notary public, in and for Cook county, duly commissioned, sworn and acting as such, and authorized to administer oaths, and take depositions; all of which appears from the records and files in my office; I am well acquainted with his handwriting, and verily believe that the signature to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the county of Cook at my office in the city of Chicago, in the said county, this 11 day of January, 1904.

[SEAL.] PETER B. OLSEN, County Clerk.

252 (Endorsed:) No. 1039. U. S. circuit court, southern district of California, southern division. The Interstate Commerce Commission *v.* Southern Pacific Company, *et al.* Depositions of Paul Morton and C. B. Strohm. Opened and filed Apr. 22 1904 Wm. M. Van Dyke, clerk.

(Endorsements, etc., on box depositions were mailed in:) No. 1039. The Interstate Commerce Commission, *vs.* Southern Pacific Company, *et al.*, Depositions of Paul Morton and C. B. Strohm taken on behalf of defendants at Chicago, Illinois, January 5th, 1904, before Wilson E. McDermut, notary public, Chicago, Cook county, Illinois.

(Addressed:) Clerk of the circuit court of the United States, southern district of California, southern division, Los Angeles, California. Two 13 cent stamps in upper right hand corner. Sealed and transmitted by mail by Wilson E. McDermut, notary public, Cook county, Illinois, 909 Ashland block, Chicago, Ill. Filed Jan. 15 1904 Wm. M. Van Dyke, clerk.

A. I made a statement there which I have not here. There was such a statement made. We carried out the promise that we made to that meeting.

136 Q. Now, I will ask you to state of your own motion anything that you may have in mind that would throw any light upon this subject, in addition to what we have already brought out by questions.

A. I have very little to tell you in regard to it.

137 Q. On the routing question I mean.

A. I have very little to say further in the matter, excepting I believe that the change that we made January 1st, 1900, when the routing was taken by the carriers into their own hands was a good thing for everybody. It certainly has made equality in the rates since, and if we had to do it over again we would probably do the same thing after having had three years' experience with it.

138 Q. Now, you stated that you think the new order has been beneficial to all concerned. Could you particularize somewhat; in what particulars?

A. Well, it has entirely wiped out the discrimination that was being practiced prior to January 1st, 1900. It has given the smaller shipper a chance to grow. It has taken away from the large shipper any advantage. It has taken away to such an extent that Mr. Earl got out of the business, and the apprehension prior to 1900 was that Earl was going to drive all those people out of business; they were afraid that he was going to make the orange business unprofitable.

234 139 Q. Their testimony shows that.

A. I have a letter here from Mr. Naftzger in which he complains——

Mr. DUNLAP: The manager of the California Fruit Agency.

A. (continued). Everybody knows who he is there.

Mr. NORTON: One of the complainants.

A. (continued). I have a letter from Mr. Naftzger dated December 9, 1899, which I will read an extract from if you wish.

140. Mr. CALL: The fruit agency was not formed at that time.

A. No, but he was the president and general manager of the Southern California Fruit Exchange.

Mr. DUNLAP: That was one of the complainants.

By Mr. NORTON:

141 Q. That was received from Mr. Naftzger prior——

A. Prior to the time we took this action.

142 Q. Read the extract.

A. I will read two or three extracts first. This is a letter to me dated December 9, 1899:

"Recalling the very kindly and frank manner in which you discussed the car question with me when I was in Chicago in October, I take the liberty to say a further word to you on the subject. You will of course remember that the particular matter under discussion

was the disfavor with which the shippers regarded the C. F. X. equipment, and you will also remember that upon my stating our objections to this equipment you said that our attitude was justifiable; that the carriers had no right to ask us to put our shipments in a competitor's cars, and that in your opinion the attitude of the carriers was indefensible." That is one extract.

"I said to you further that there was an intense feeling among the fruit growers of southern California on the subject of this car arrangement. I found that feeling intensified when I reached home. I have invariably counselled moderation and have again and again advised against attacks in the newspapers on the transportation companies. I am sure that the local management have no adequate conception of the nature of the current feeling all through this community, and doubt whether it can much longer be restrained under the present state of affairs."

235

"To add to the exasperation the Earl Fruit Company is quoting fancy oranges from our best districts all over the United States at from 10 to 25 cents below current rates, and I am informed that that company, while making these demoralizing quotations, is itself shipping very little fruit. Of this last, however, I am not sufficiently informed to speak with certainty; as to the other matter, I know. The effect of this, as you can well see, is to cut the price of almost every car of fruit going out for the holidays. I have no doubt that these bear methods of the Earl Fruit Company will cost the orange shippers of southern California $50,000 on their holiday shipments."

I read that just to show the feeling.

Mr. CALL: May I see that?

The WITNESS: Yes. You can read the whole letter if you wish.

Mr. CALL: (after reading letter): I do not see anything of any interest except that.

Counsel for complainant agrees that the copy of the letter read into the record may go in evidence in lieu of the original, subject to all objections.

By Mr. NORTON:

143 Q. Now, Mr. Morton, since January 1st, 1900, have you received any letters from Mr. Naftzger of this tenor or from others?

A. Since we have eliminated the private car ownership we have had no trouble of that kind at all, no complaints. Everybody appears to be satisfied.

144 Q. There is considerable in the testimony to the effect that just coincident with the assuming of the right to route by the initial carriers, the time to Chicago and other eastern points was very slow.

A. That was physical trouble that we had on account of the coal strike, and had nothing to do with the routing. It was also due to congestion of business. For the last five years you know the railroads of the United States for the first time in their history have been behind the wants of the country, and they have all had trouble.

236

By Mr. DUNLAP:

145 Q. It has been growing steadily, has it not?

A. The worst trouble in the United States has been on the very best railroad in the world; that is, the Pennsylvania railroad. They could not build—the shops of the country have not been able to build railroad equipment and power fast enough to take care of the business of the country.

By Mr. NORTON:

146 Q. Could you tell from any memorandum that you may have what percentage of increase of traffic there was in 1900 over 1899?

A. I think I have got that somewhere.

147 Q. Of the Santa Fe lines?

A. Of the Santa Fe lines?

148 Q. Yes.

A. No, I could tell that by the last annual report. Well, all I can say is that there has been a very large increase in our business steadily ever since 1896. I believe that our business in 1903 showed an increase over 1896 and '97 of about 200 per cent.

149 Q. What other physical conditions were there besides the increase of business in 1900?

A. I think that is the year we had the telegraphers' strike.

150 Q. And the coal strike also?

A. And the coal strike in Colorado. That is my memory; I am not sure about that.

By Mr. CALL:

151 Q. The reports of the Santa Fe Company to the Interstate Commerce Commission show for each year the business of the company and the earnings and the operating expenses?

A. Yes sir. That is better evidence than I can give you, because that is statistical. All I can say is that the business has increased since 1897.

237 By Mr. NORTON:

152 Q. You speak about a coal strike. Was that a strike at the coal supply of the companies?

A. Yes, in Colorado.

153 Q. Did it interfere with the fuel supply?

A. Just as the present strike in Colorado is interfering with our fuel supply. Instead of getting two or three thousand—2,000 tons in Colorado today we cannot get any supply there to speak of and the result is we are sending the Kansas coal that we have to Colorado, and the Missouri coal to Kansas, and the Illinois coal to Missouri, and in Illinois we are using Pennsylvania and Virginia coal. These conditions are all new to the engineers, and they are not making time with passenger or freight trains, and it is something that is entirely beyond our control.

154 Q. And this change of coal, the change of coal from one locality to another, has caused the use of it in furnaces and burners and screens that are different and made for the use of other coal?

A. Entirely.

155 Q. Now, I wish you would state what you know about the service that has been given since January 1st, 1900, to the business?

A. The service sometimes has been satisfactory; at other times it has not been satisfactory.

156 Q. How has it been with respect to the fruit business; that is to say has it been prompt or not?

A. It is generally prompt. Our citrous fruit traffic is generally satisfactory.

157 Q. Relatively then, you mean to say that the citrous fruit business has been handled with more expedition than any other business you have?

A. It has been handled with more expedition and at greater cost that any other business we have.

Mr. NORTON: I think that is all I want to ask.

Cross-examination by Mr. CALL:

158 Q. I understood you to say that the Earl Fruit Com-
238 pany and Mr. Earl, who prior to January, 1900, were furnishing some refrigerator cars, were engaged in the fruit trade themselves?

A. Yes sir.

159 Q. And that that was one of the bases of complaint?

A. Earl had two companies in which he was the chief owner, the Earl Fruit Company and the Fruit Growers' Express, a company which owned a line of refrigerator cars.

160 Q. Do you know that the Armour car lines are engaged in the fruit business now?

A. I do not think they are. It has been suspected, though, that the Armour people bought Earl out, but I think it is run entirely separately. Whether they have sold it again I do not know. They bought his cars, and it was supposed they had bought the fruit company.

161 Q. I understand they are engaged in the business.

A. I do not understand that there is any complaint of them on the part of shippers. There might be engaged in the fruit business and might be conducting the fruit business in a way that was perfectly satisfactory to the producers out there.

162 Q. You say the Santa Fe Railway Company in January, 1900, began to furnish its own refrigerator car equipment. How did the company accomplish that?

A. We began before that to furnish cars of our own.

163 Q. You now furnish all of your own cars for the refrigerator business?

A. We now furnish all, yes.

164 Q. Through what instrumentality or means do you supply cars on the Santa Fe system for the citrous fruit business?

A. Through a car line.

165. Mr. DUNLAP: What company?

A. Through a car line company called the Santa Fe Refrigerator Dispatch.

By Mr. CALL:

166 Q. Who manages that company?

A. That company is managed by Mr. J. S. Leeds.

239 167 Q. What relation has he with the Santa Fe Railway Company or its system?

A. He is, you might say, an employe of the Santa Fe system.

168 Q. The Santa Fe Refrigerator Despatch is a corporation, is it not?

A. It is a corporation.

169 Q. Organized under the laws of what State?

A. Kansas, I think.

Mr. DUNLAP: I think so.

By Mr. CALL:

170 Q. What is its capital stock?

A. I have forgotten.

170½ Q. Do you know who its officers are?

A. I think I am one of its officers.

171 Q. Who owns its stock?

A. The Atchison, Topeka & Santa Fe railroad.

172 Q. What were the earnings of the Santa Fe Refrigerator Despatch for the last year?

A. I have not got them, but their earnings are quite large.

173 Q. Well, can you later ascertain what the gross earniugs are and what the operating expenses are and furnish a statement that may be taken in this evidence.

Mr. NORTON: That I object to as not on the routing question.

By Mr. CALL:

174 Q. Can you state whether Mr. Naftzger has any interest direct or indirect in the stock or business or earnings of the Santa Fe Refrigerator Despatch?

A. None whatever. He has no private interest in it of any kind.

175 Q. During how long a period was the coal strike which you refer to in existence?

A. Several months; I don't remember exactly.

176 Q. Two or three months?

A. Yes.

177 Q. Three or four months?

A. Yes.

178 Q. Not over four months?

A. Not over four months.

240 179 Q. In the year 1901?

A. I think that is my memory in the matter. I do not know whether it was 1900 or 1901. It was one of those years. But it disorganized us, and the telegraphers' strike at the same time disorganized us.

180 Q. Has there been any coal strike other than that strike, the Colorado strike in 1900, and the present strike arising out of the movement of coal?

A. Every now and then they have trouble with their miners at the mines out in Colorado and at the mines out in New Mexico. I do not just remember how often they have had it. No big strikes except the present one and the one that occurred several years ago.

181 Q. Do you have anything to do in your relations with the Santa Fe system concerning the procurement of car equipment and the necessary amount of cars to be required by the Santa Fe system each year?

A. I am consulted in regard to the equipment necessary to purchase, but I have nothing to do with the purchasing of it. That is done by our operating department.

182 Q. Mr. Chambers has charge of that, has he?

A. No, Mr. Chambers has nothing to do with that at all.

Mr. DUNLAP: I think you are talking about something else, aren't you, Mr. Call—about the yearly supply? Mr. Morton understands you are talking about the amount of equipment purchased.

The WITNESS: Yes.

By Mr. CALL:

183 Q. It has been testified in this case by several witnesses that the average time of citrous fruit from southern California to Chicago was under six days prior to January, 1900?

A. I should say that was wrong. I do not believe that is possible.

Mr. NORTON: With your permission, I think the general tenor is that it was eight. I have gone over the testimony pretty carefully.

By Mr. CALL:

184 Q. And that the time since January 1900, has averaged from ten to twelve days.

241 A. Our present schedule of the orange train from San Bernardino to Chicago is approximately eight days. We try to make that time, and we are told by the shippers out there that if we can make that time they will be satisfied with it. That is a matter that we have discussed with them frequently.

185 Q. What was your schedule prior to 1900?

A. Well, I could not tell you without looking it up, but I should not think it was less than eight days. To my knowledge or recollection there was no change made at that time in the schedule.

266 W. G. FRASER, a witness produced on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination.

By Mr. HUNSAKER:

Q. Please state your name and place of residence?
A. W. G. Fraser, Riverside, California.
Q. What business are you engaged in?
A. I am an orange grower and secretary and treasurer of the Arlington Heights Fruit Company.
Q. What is the extent of the growth of the oranges there?
A. It is composed of two companies, the Riverside Trust Company, owning about 1000 acres of orange and lemon groves, and the Riverside Orange Company, owning 600 acres of orange and lemon groves.
Q. What was the total amount of shipments of oranges for the season of 1898 and 1899 of the company?
A. Between 400 and 500 carloads.
Q. And what amount of shipments up to this time for the present season?
A. About 600 cars.
Q. Have you been able to obtain cars as you needed them for the shipment of your crop of oranges this year?
A. We have not.
Q. State what the condition has been in that respect, in a general way?
A. During the month of January, February and March we were short on an average about two cars a day.

267 Q. Had you given the railroad companies, the Southern Pacific and the Santa Fe lines any notice or information as to the probable number of cars you would require, and about when you would require them?
A. Yes sir. We have given them written notice of the year's business, of the number of cars that we would require in the next year's business.
Q. You say there was a shortage of two cars a day?
A. A little over two cars a day, averaged about two and a half cars, one day two cars and the next day three cars, over two cars.
Q. What was the effect of your inability to obtain cars as you ordered them upon your business?
A. It was rather disastrous.
Q. How?
A. We could not fill an order promptly, we were obliged to hold the fruit in our packing house for several days longer than it ought to have been kept there, consequently it deteriorated in value and keeping qualities.
Q. What was the total amount of refrigeration charges paid by

your company on its shipments of oranges for the season of 1898 and 1899?

A. $310.

Q. What amount have you paid for icing during the present season?

A. We started in on the 16th day of March last, and including the cars already shipped, and those which we expect to ship it has cost us about $16,000, in round numbers, taking the average of the shipments and the cost of refrigeration to date and striking an average.

268 Q. How do you account for the great difference between the amount of refrigeration required in moving your crop last year and the present season?

A. Several reasons.

Q. State them.

A. The failure of the railroad companies to furnish us cars when we wanted them when fruit was in proper condition to *to* move, loading of the cars where the ventilation was not proper, there was no sufficient space left to ventilate properly, and we believe the failure of the railroad company to ventilate the cars was acknowledged, as we have had numerous complaints from customers from different parts of the United States and Canada of cars arriving in a heated condition.

Q. Have you had a larger number of complaints of cars arriving in a heated condition, of fruit arriving in a heated condition than you have had prior years?

A. Very much larger this season.

Q. What proportion of the crop could you have moved this year prior to the 15th of March, if you had been furnished cars by the railroad company, as you required them?

A. I should say about 150 to 200 cars.

Mr. HERRIN: More?

A. Yes sir, more.

Mr. HERRIN: Than you did move?

A. Yes sir.

Mr. HUNSAKER: Prior to the first of January your company was permitted to direct the routing of these shipments, was it not?

269 A. Yes sir.

Q. Since that time it has not been permitted to do so?

A. No sir.

Q. Can you give any instance in which you have been injured, in which your company has been injured by the refusal to accord you that right?

A. I can.

Q. State it.

A. About the 8th of January we received an order from our brokers in St. Louis for a car of fancy navels, and in the telegram placing the order with us it was specified by the customer that it should go by the C. B. and Q. delivery. We were ready to ship the

car out on the 12th of January, the Santa Fe at that time was short of refrigerator cars, but we were informed by them, by the agent, that we could get an odd car from the Southern Pacific, provided it was routed over their line.

Q. Over which line?

A. The Southern Pacific line and connections, when in this particular case the car was received from the Southern Pacific we requested, as we were not permitted to insert the routing in the billing the C. B. and Q. delivery, as our customer desired that delivery. The bill of lading was issued by the Southern Pacific, and instead of giving us the C. B. and Q. delivery they gave us S. P., T. and P. and Frisco delivery. The car arrived in St. Louis on January 22nd, and we received a wire from our brokers to the effect that the customer would not accept the car as it arrived over the Frisco line and drawing attention to the fact that they requested C. B. and
270 Q. delivery. We wired back that the routing was taken out of our hands, and that we did not think it was reasonable for them to take that stand. After exchanging several telegrams they still persisted in refusing the car. In the meantime the railroad company notified us that the car was lying on their track in St. Louis, and to make the disposition of it quickly. We did so, we diverted the car to New York. It was sold there at public auction and it realized $122.56 less than the invoice price. We have made a claim on the railroad for this loss and have filed our papers in connection with the claim with them.

Q. If the railroad company had furnished you cars so that you could have shipped all of your fruit as it ripened ready for the market, prior to the 15th of March, would it be necessary to refrigerate or ice the fruit?

A. We did not refrigerate any up to that time.

Mr. HUNSAKER: Take the witness.

271 (3.) So much of the testimony of witness Earl as is contained and is indicated by a pencil mark at pages from 67 to 72, inclusive, side paging (pp. 166–171 bottom paging) and from pages 213 to 218, inclusive, of the testimony taken in 1900.

The testimony last offered is as follows:

"Mr. NAFTZGER: Mr. Earl, I think you stated that the division of the business, this orange business, among the car lines was in the nature of percentages, in accordance with the number of cars provided by each car line. Is that what you stated, and that it was substantially 37½ per cent., of the business for the Continental Fruit Express; 37½ per cent., for the Fruit Growers' Express, and 25 per cent. for the Santa Fe Refrigerator Line?

A. Yes, those were the percentages in December last, when there were 4000 cars in the service.

Q. When was that percentage fixed?

A. I don't know the date, some time at the beginning of the sea-

son, when the railroads notified the different car lines how many cars they wanted from them.

Q. You mean at the beginning of the season, November 1st?

A. Yes, about that time.

Q. Did the same percentages prevail last year?

A. No, I think not last season.

Q. How many cars did the Continental Fruit Express have in this orange traffic in previous years. That is to say, from November, 1898, to the close of the orange shipping season in the summer of 1899?

A. I can't give you the figures accurately, they varied from one month to another during the 12 months of that season.

272 Q. Was there any percentage or basis of division between the car lines that year?

A. Well, as I stated before, the railroads made their requisitions on the car lines to furnish cars from time to time. As the season progressed, and shipments were heavy, they asked for more cars. If the shipments were light, as they were at certain times in the 12 months, they asked for less cars, and whatever cars they had from the car lines determined the percentage each car line had in the business.

Q. Did you have a specific increase in the equipment of the C. F. X. cars at the beginning of this season, after the previous year?

A. Yes, I think there was an increase.

Q. Upon the demand made by the railroads only?

A. I can't tell about that. There were 3000 cars in the business beginning November 1, 1898, and ending October 31, 1899. The car lines had in 3000 cars at times, and they had in more cars at the height of the season. When this present orange season approached the crop promised to be much larger than last season, and the railroads notified the car lines that they wanted more cars and wanted 4000 cars.

Q. Of these 3000 cars you speak of as having been in the service in the previous year, how many were Continental Fruit Express cars?

A. I think 1000.

Q. One thousand? Was the increase to 1450 cars made by a demand on the C. F. X. Co. by the railroads?

A. As I understand it, they, (the two railroads) notified the Continental Fruit Express that they wanted a certain number of

273 C. F. X. cars, which aggregated 1450 cars for the two lines of railroad.

Q. Isn't it a fact, Mr. Earl, that your company made an arrangement with the Fruit Growers Express, or Armour & Company, by which you increased your equipment in this business, and they withdrew certain cars?

A. No. Technically it did not. As I stated before, the railroads have the right to make requisitions for these cars. It is a matter

not in the hands of the car lines. This year there were more F. G. E. cars than ever before.

Q. What do you mean by technically?

A. I say that the car lines, as I stated before, have no power to agree among themselves as to how many cars each of them will furnish for this business. Each of these car lines has a separate contract with the railroads to furnish them cars, and the railroads make their requisitions for cars on each line separately, not in the aggregate.

Q. Does the agreement which is in evidence here with the Continental Fruit Express provide for 1450 cars?

A. No.

Mr. EARL: You mean the railroad contract?

Mr. NAFTZGER: The railroad contract.

The WITNESS: The railroad contracts of November 1, 1897, provide for 1000 cars; 1000 C. F. X. cars, I believe, at that time.

Q. Now, will you say that all the increase over and above that 1000 cars has been made upon the demand of the railroads only, and not be any agreement between the C. F. X. Co. or its representative, and the Fruit Growers Express or its representative?

274 A. Well, you are speaking of things that I am not familiar with. I cannot answer that. As I told you a while ago, the railroads make requisitions on the separate car lines for these cars. If Armour & Company, for instance, as you intimate, decreased the cars, it was their business if they decreased the cars, or said to the Southern Pacific we can furnish only so many.

Q. Isn't it a matter of fact, Mr. Earl, that there was an agreement between the C. F. X. Co. and the Armour Company, or their representative, that Armour & Company should withdraw a part of their equipment from this service and the C. F. X. Co. should supply it?

A. No. The Armour people have the same number and more cars in this service now than they had in 1897, when these contracts were made. They had in the service this year, at one time this season, I believe, 2400 or 2500 cars, whereas the original contracts made on November 1, 1897, gave them 1400 cars; I believe it called for 1400 cars.

Q. Do you answer my question categorically now?

A. My answer clearly shows that they did not withdraw any equipment from this territory.

Q. How many cars of these 3000 that you have testified to as being in the service the previous season were Fruit Growers Express cars?

A. Of the 3000?

Q. Of the 3000 you said were in the service?

A. I think they had, if I remember correctly, 1400.

Q. How many Santa Fe Refrigerator Line?

A. Six hundred.

275 Q. Six hundred?

A. That is, under the 3000 basis. As I stated a while ago, during last season, during the height of the season, there was an increase in the equipment, and if I remember correctly now, refreshing my memory, last year there were 4000 cars in the business a portion of the time.

Q. Now, I will ask you to say if it is not a fact that there was an understanding between the Continental Fruit Express Company or its representative, and the Fruit Growers Express or its representative, by which the cars of the Continental Fruit Express were increased in number and the cars of the Fruit Growers Express as relatively decreased?

A. I am not able to answer your question.

Q. You are not able to answer the question because you do not know about the facts?

A. I don't understand your question, and I don't understand the facts enough. I know this, that the railroads at the beginning of this year arranged with the Continental Fruit Express to furnish them 1450 cars out of 4000.

Q. I will put the question in a different form. Did the Continental Fruit Express, or its representative, have any understanding or agreement, or either, with the Fruit Growers Express or its representative, that the Continental Fruit Express should supply 500 cars for this southern California citrus fruit business that the Fruit Growers Express would otherwise have furnished?

A. No, I know of no such agreement.

Q. Will you say that the increase of the equipment of the Continental Fruit Express this year in this orange business was
276 made solely and entirely upon the demand of the railroads for the equipment, and not in pursuance to any understanding of any kind between the Continental Fruit Express or its representative, and the Fruit Growers Express or its representative?

A. No, I won't say that.

Q. Well, how was it made?

A. Well, as I have told you a while ago, and repeatedly, when this season approached, and there was a prospect of a large crop of oranges, the railroads concluded that they wanted more cars, and they called upon the several car lines for additional equipment, and they called upon the C. F. X. to put in 1450 cars.

Q. Then I will ask you, Mr. Earl, to state what conference the representatives of the car lines had between themselves with reference to this increase of the equipment.

A. I don't know.

277 "Q. Now for 1898–'99 the railroad companies had ordered from the Santa Fe Refrigerator Line and Armour & Company how many additional cars, if you know, Mr. Earl?

A. I think there were 1000 cars, 500 on each line. That gave the

Santa Fe Refrigerator Line, Santa Fe Fruit and Refrigerator Line, so-called, 1100 out of 4000 cars.

Q. And you had a thousand?

A. We had a thousand. That was last season. We had a thousand cars in the business permanently and these other people had 500 cars each of these other lines temporarily in the business, if they were needed.

Q. Now did you take the matter up with Armour & Company or Fruit Growers' Express?

A. No, I did not.

Q. Did you delegate that to some one else?

A. You questioned me on that the other day and I told you that I did not know about the details of it.

Q. To whom did you entrust the doing of that?

A. I didn't entrust it to anyone in that sense. Mr. Schumacher is the general manager of the C. F. X. Car Line and in looking over those details I have heard that he made some arrangement with Armour & Company over there whereby when this season opened we traded around somewhere else in other territory.

Q. Did you personally have the conference with Mr. Stubbs and Mr. Sproule?

A. In regard to what?

Q. In regard to the furnishing this additional equipment about which we have been inquiring.

278 A. I may have myself. I think Mr. Schumacher informed them that we had more cars than were in that old contract of 1897, and that if they wanted additional cars we would be glad to furnish them.

Q. It was a matter of considerable importance to you and your company, wasn't it, Mr. Earl?

A. No; in one sense we had business for the cars elsewhere, but there was a keen rivalry between these car lines and is yet, and naturally if there was a business here, an increasing business, we wanted to keep our cars together in one territory as far as we could.

Q. And you did take enough interest in it to take the matter up with the Southern Pacific officials, didn't you?

A. I think once I did. I was in San Francisco when Mr. Schumacher was in the East and I stirred them up?

Q. When was that?

A. I told you November or December, 1898, when they first put on these additional cars.

Q. With whom did you have the interview at that time, Mr. Stubbs of Mr. Sproule?

A. It may have been with both of them, and it was all along the line, several of the officials.

Q. Did you not have an interview on this subject with both Mr. Stubbs and Mr. Sproule?

A. I would not say about Mr. Stubbs. It is immaterial who I had the talk with. As I refresh my memory now, I did have an

appointment with Mr. Stubbs on that subject, and the day I was to have an interview with him, he was called East on important
279 business and we did not have any talk about it. I talked it over with the manager and with the general freight agent and with the assistant superintendent and with Mr. Sproule, probably, and Mr. Luce down here and all along the line.

Q. Now, Mr. Schumacher, is the vice president and general manager of the Continental Fruit Express Company, is he not?

A. Yes.

Q. How long has he been vice president and general manager?

A. I think since October, 1898.

Q. Where are Mr. Schumacher's headquarters?

A. In his trunk, to a certain extent. He is at Chicago part of the time, Los Angeles part of the time, and Sacramento part of the time.

Q. Where is Mr. Schumacher now?

A. I don't know.

Q. How long since he has been here in Los Angeles?

A. I don't know exactly. Some weeks. He has been in Chicago looking after matters.

Q. Was Mr. Schumacher here in Los Angeles during the time the Interstate Commerce Commission was hearing evidence in these proceedings?

A. Yes, he was. I think he was. He was sick.

Q. And how long after that before Mr. Schumacher left Los Angeles, after the commission adjourned here?

A. I don't remember. Soon after that he went up to San Francisco, I think.

Q. And was up there during the time the commission was in session?

280 A. He may have been there during that time. He did not go up there on commission business. He was there on other matters.

Q. And Mr. Schumacher had a great deal to do with making these arrangements with the Fruit Growers' Express or Armour & Company, had he, for this additional equipment and the proportion in which it was to be supplied to the railroad company?

A. Well, he had had some business relations with the Armour people over there. He is in Chicago a good deal of the time and they have discussed these matters and tried to work in harmony and in a friendly way.

Q. Who has had more to do with the arranging of the details of the understanding which was finally reached between your company and Armour & Company or the Fruit Growers' Express, as to the furnishing of this additional equipment, you or Mr. Schumacher?

A. What additional equipment do you refer to now?

Q. The additional equipment which the railroads required for the present season, which you have said the railroads notified these com-

253 In the Circuit Court of the United States, Southern District of California, Southern Division.

INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

Testimony Taken Before Special Examiner Cates.

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Longley, Keith, Bagley & Co., shorthand reporters.

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257 In the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, Defendants. } No. 1039.

Testimony taken before Alton M. Cates, special examiner and commissioner in the above entitled cause, commencing on October 3, 1903, and by consent of parties adjourned from day to day until this 19th day of October, 1903, at room 308, Currier building, Los Angeles, California.

Present: L. H. Valentine, United States attorney; Joseph H. Call, special assistant United States attorney. William F. Herrin, E. F. Dunne and Frank P. Flint, attorneys for Southern Pacific Company. T. J. Norton, attorney for the Atchison, Topeka & Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, and Southern California Railway Company.

And thereupon the following proceedings were had:

It is agreed and understood by and between the parties and their attorneys, that Leo Longley shall act and is hereby desig-
258 nated as a shorthand reporter to take and transcribe the testimony taken in this hearing.

It is further stipulated by and between the parties and attorneys to this cause, as follows:

1. That the report of the Interstate Commerce Commission, dated April 19th, 1902, in the proceedings before said commission entitled The Consolidated Forwarding Company *vs.* The Southern Pacific Company, and others, No. 575, and The Southern California Fruit Agency, *vs.* The Southern Pacific Company, and others, No. 576, which said report is attached as an exhibit to the bill of complaint in this case, shall be deemed to be in evidence with like effect as if formally offered, subject, however, to all leading objections.

2. That either or any party to this cause may offer in evidence, without further authentication, any part of the testimony taken in said proceedings above entitled, numbered 575, and 576; and to that end the attorney or attorneys of either party to this cause may designate to the special examiner and commissioner heretofore appointed herein any part or parts of such testimony which he may desire to have transcribed, and when so transcribed and its correctness has been certified to by such special examiner and commissioner, the same may be introduced in evidence as a part of the record herein with the same effect as if taken in this cause, subject to all other legal objections. Such testimony so offered shall show

by whom the witness was called in the proceedings before the commission, but when offered in the present suit such testimony shall be deemed to be the testimony of the party so offering the same.

259 Mr. CALL: We offer in evidence: (1) So much of the testimony of witness Everest as is contained at pages from 58 to 62, inclusive, in volume 2 of testimony taken before the commission in 1900.

The testimony last offered, is as follows:—

260 APRIL 27, 1900.

ARTHUR J. EVERIST, being first duly sworn, deposed and in response to questions of counsel, testified as follows:

Direct examination.

By Mr. HUNSAKER:

Q. Please state your name, occupation and place of residence.

A. Grower and shipper of oranges. Our packing houses and grove are located at Arlington, Riverside county, California.

Q. How long have you been engaged in the growing of oranges, Mr. Everist?

A. Well, my father planted a grove in 1881. He managed it personally up to about five or six years ago when he left it partly on account of ill health and I have had charge of it ever since.

Q. What amount of oranges have you shipped annually the last three or four years?

A. Our shipments have varied from fifty cars to ninety for the past six or seven years.

Q. What cars, or the cars of what lines have you used for the shipment of your oranges?

A. We have used no particular cars for our shipments. Have used any cars that have been furnished us.

Q. Have you, as a grower and shipper, any objections to the use of the cars of the private car lines which you are now obliged to use?

A. Well, as a grower only, I would say there was no special
261 objection now, but I think that in many cases the fact that the carlines are owned by parties in the same business as we, that the use of such cars, whereby they obtain special concessions from the railroad company, often works to our disadvantage. I have but a few special cases that I have seen where such carlines, owned by other shippers, have worked especially to our disadvantage, but a few cases I have noted.

Q. State the facts in regard to those cases.

A. Either last year or the winter before, I believe it was the winter before, we sold two or three carloads of oranges packed under our brand to one of the large shippers who is interested, either direct or indirect, I presume, in one of the car lines, at a certain specified

price. Throughout the East we have our customers, and that party to whom we sold the cars was enabled in some manner—and I see no other way than that he had special privileges through the car line—to not only meet the prices that we were quoting then, but to sell those three cars, or offer to sell them, at prices below what he paid us for them as such price was quoted to one of our best customers at a figure five cents per box below what we had offered him, it of course made difficulty, and it took considerable letter writing to explain the situation satisfactorily. It is needless to say that I sold no more cars on that basis.

Mr. HERRIN: You sold carloads of fruit?

A. Carloads of fruit, certainly. Where I used the word cars I mean cars of oranges.

Mr. HUNSAKER: Can you give us any other instance than the one you have spoken of?

A. I can recall nothing now.

262 Q. Have you ever received any rebates on your shipments, Mr. Everist?

A. I never have taken a rebate.

Q. Do you know of any detrimental fact the taking away from the shipper of the privilege of designating the routing has had on the business?

A. The only ill effect I can see is the fact that where the routing is left with the initial road there is certainly no incentive to the eastern lines to give us either quick service or proper attention to our fruits.

Q. Well, what has been your experience in — respect?

A. My experience has been that not only have we had poorer service in the way of time this winter than two years ago, when we routed out own fruit, but the ventilation has been in many instances neglected.

Q. What was the average time required for the transit of a car from your place to New York when you were permitted to designate the routing of the car?

A. Well, I will say that two years ago (last year we shipped very little to New York) two years ago on what cars of oranges we shipped to New York city the average time was practically 11 days from the time it left Arlington to delivery in New York city; while this year on five or six car-loads I have sent to New York and to Troy, the time has been 13 to 13½ days average; that is, they have made two days slower time to New York city on what fruit we have shipped this winter.

Mr. EARL: Five or six cars?

A. That is all we have sent.

263 Mr. HUNSAKER: Is your packing house located on the Santa Fe or Southern Pacific?

A. On the Santa Fe.

Q. What has been your experience in regard to the routing of cars by the Santa Fe over the Southern Pacific this winter?

A. I don't know as I quite understand your question.

Q. Has the Santa Fe routed cars against your protest over the Southern Pacific this winter?

A. I have had to take cars that I would allow them to send Southern Pacific, when I desired cars to go Santa Fe.

Q. Why did you desire your cars to go Santa Fe, rather than Southern Pacific?

A. Because as far as I have had experience the saving in time is from one to two days to the points where I wish cars delivered, and I believe it is a better route than the Southern Pacific through Arizona and Texas.

Mr. HUNSAKER: Take the witness.

Mr. STEVENS: Mr. Everist, was there any reason given to you why your routing should be over the Southern Pacific in those instances that you have referred to?

A. In the case of the car that I desired to go Santa Fe?

Q. Yes sir.

A. The excuse was that the equipment was S. P. equipment, and it should go S. P.; that the Santa Fe were short of refrigerators.

Q. In other words, they told you that if the Santa Fe had the requisite number of cars they would send your fruit that way, but they had to call on the S. P. for equipment, and so they felt like sending it S. P.?

A. They told me the car they could deliver me was what
264 they called an S. P. car and it had to back S. P., and they had nothing to go Santa Fe, and therefore I had to send it in one of those cars to go S. P. or had to stand and wait an indefinite time. There was no promise at all.

Mr. STEVENS: That is all.

Mr. HERRIN: How did the shipment get through?

A. That shipment arrived in very poor condition, the party made considerable loss on it.

Q. What was the matter with it?

A. It was a car of choice fruit, and it showed considerable decay, and not only that, but the ventilators had been allowed to stay open when the temperature was below freezing, and the fruit was somewhat damaged by cold.

Q. Temperature below freezing? It went via El Paso, did it?

A. Yes, it went via El Paso. I don't presume it was damaged by cold through that country.

Q. Where was it? That was East, up in the Mississippi valley?

A. I presume there somewhere; between there and its destination, Utica.

265 (2.) Also, testimony of witness Fraser, contained at from pages 157 to 161, inclusive, in volume 2 of testimony taken before the commission in 1900.

The testimony last offered is as follows: "

ager, since that date, that we did not want to be forced to make our shipments in the C. F. X. cars and that he either considered that we should be permitted to supply cars for our shipments on our
293 own account or that they should furnish us other suitable equipments than the C. F. X. cars.

Mr. HUNSAKER: What response did Mr. Sproule make.

Mr. NAFTZGER: He said he did not think we had any ground for objecting to the C. F. X. cars.

Mr. HUNSAKER: Prior to November 1st, 1897, what cars had been used, refrigerator cars, in the shipment of fruit from southern California to eastern markets over the Santa Fe and the Southern Pacific lines.

Mr. NAFTZGER: Well, there were various cars in use; over the Southern Pacific at one time were the Goodell cars,—I think it is known as the Goodell refrigerator, and over both lines, but more particularly the Southern Pacific, the C. F. T.—the Southern California Fruit Transportation Company's cars were in the service. There were sundry other cars, some cars of the Milwaukee railroad.

Mr. HUNSAKER: Is that all you recollect?

Mr. NAFTZGER: Occasionally we made shipments in the Merchant Dispatch Transportation, I think, is the name of the car and the American Refrigerator Transit Company's cars at times. A good many shipments were made in ventilated cars at certain seasons of the year—ventilated fruit cars.

Mr. HUNSAKER: Without refrigeration?

Mr. NAFTZGER: Without refrigeration.

Mr. HUNSAKER: Does the proper shipment of oranges require refrigeration?

Mr. NAFTZGER: At certain seasons of the year. Not at all times.

Mr. HUNSAKER: Between what dates is refrigeration required.

Mr. NAFTZGER: Well, refrigeration usually begins about
294 the first of April. This year it began earlier. It usually begins about April 1st and continues to the end of the season on most shipments, although not on all shipments.

Mr. HUNSAKER: Prior to the fall of 1897, were you familiar with the carriage or rates for refrigeration charged by these several car lines?

Mr. NAFTZGER: Yes sir, for some years.

Mr. HUNSAKER: State what those rates were.

Mr. NAFTZGER: To the best of my recollection—I am not able to say the tariffs did not vary—but to the best of my recollection prior to last year the refrigeration rates were sixty, seventy-five and ninety dollars; that is, sixty dollars, say, to the Missouri River points. Seventy-five dollars to Chicago and ninety dollars beyond. I will not say absolutely that those tariffs did not vary, because I cannot remember exactly the tariffs of the various years.

Mr. HUNSAKER: State whether or not it was customary for the

refrigerator car lines during that time to make any allowance or discount from those rates, the tariff rates.

Mr. NAFTZGER: I do not think the tariff rates were very stiff any time; there was usually an opportunity to get something on the side.

Mr. HUNSAKER: Well, what is the fact about that.

Mr. NAFTZGER: So far as we are concerned, I do not think we ever paid tariff on refrigeration.

Mr. HUNSAKER: What discount or allowance or percentage of discount or allowance was made to the shippers by the refrigerator cars?

295 Mr. NAFTZGER: The allowances were variable. I should say all the way from ten to twenty-five per cent.

Com'r CLEMENTS: Do you mean of the tariff rates.

Mr. NAFTZGER: Of the published refrigerator tariffs.

Com'r CLEMENTS: You mean the refrigerator price?

Mr. NAFTZGER: Yes sir.

Mr. STEVENS: Is that prior to 1897 that you are speaking of?

Mr. NAFTZGER: I should say prior to the season of 1899.

Mr. HUNSAKER: The seasons of 1898 and 1899.

Mr. NAFTZGER: The refrigerator season did not begin until April, 1899.

Mr. HUNSAKER: Well, by this rate of $60, $70 and $90, you mean that that was the tariff published by the car line companies for the use of the cars under refrigeration.

Mr. NAFTZGER: Well, I should say for the refrigeration. I cannot say it was for the use of the car.

Mr. HUNSAKER: That was the amount you paid in addition to the regular railroad tariff rates, was it not?

Mr. NAFTZGER: Yes.

Mr. HUNSAKER: The entire amount?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: And on those rates they gave you a discount ranging from ten to twenty per cent.?

Mr. NAFTZGER: Yes sir; that is, on the refrigeration tariff. I do not mean on the railroad tariff, but on the refrigeration tariff.

Com'r CLEMENTS: Did you say from ten to twenty or twenty-five per cent.?

296 Mr. NAFTZGER: Well, I should say twenty-five. I do not undertake to be absolutely accurate on the amount.

Mr. HUNSAKER: What car line made those allowances or discounts prior to 1899?

Mr. NAFTZGER: All the car lines, to the best of my recollection, that we ever used in our business.

Mr. HUNSAKER: State whether or not the Continental Fruit Express did?

Mr. NAFTZGER: We never made shipments in the Continental Fruit Express cars when we could avoid it and I never had any arrangement with them.

Mr. HUNSAKER: How as to the Armour or Fruit Growers Express?

Mr. NAFTZGER: We have usually had a tariff arrangement with the Fruit Growers Express for some sort of an allowance and whatever we could catch at the time.

Mr. HUNSAKER: And the Santa Fe Refrigerator Line?

Mr. NAFTZGER: Yes sir; the same as to the other car lines when they were in here.

Mr. HUNSAKER: You say you have not used the Continental Fruit Express Company's cars.

Mr. NAFTZGER: We never have when we could avoid it.

Mr. HUNSAKER: Why:

Mr. NAFTZGER: Because they were as we understood under the control and ownership of our competitor in the fruit business operated for his benefit and more or less under his notice and knowledge.

Mr. HUNSAKER: Who do you mean by your competitor.

Mr. NAFTZGER: Mr. E. T. Earl.

Mr. HUNSAKER: What was the custom prior to January 1,
297 last, of the Southern Pacific Company and the Southern California Railway Company and the other roads composing the Atchison, Topeka & Santa Fe system as to allowing the shipper to direct the routing of the cars?

Mr. NAFTZGER: We have always been allowed to select out route in the published tariffs.

Mr. HUNSAKER: How long has that condition of affairs existed?

Mr. NAFTZGER: Ever since I have had anything to do with the business.

Mr. HUNSAKER: Has there been any change in that respect by the railroad companies, if so, what and when?

Mr. NAFTZGER: Since the first of January last they have denies us that privilege, the initial line assuming the right and actually routing to destination.

Mr. HUNSAKER: State whether or not in view of your experience the privilege of directing the routing is necessary to the shippers?

Mr. NAFTZGER: I think it is necessary to the best results.

Mr. HUNSAKER: State your reasons for that opinion.

Mr. NAFTZGER: I shall speak particularly of our own business. Our system of marketing is to sell the fruit in the markets not here. We send our fruit forward to be sold on the market conditions as they exist at the time of the delivery. The different sections of the country take different classes of fruit. Besides, we are compelled to test the markets. The markets that we think today will take the fruit on arrival may be filled up with our competitor's fruit or other conditions may prevail to make it impossible for us to avail ourselves of that particular market. If the shipper has control
298 or knows the routing of his business or is able to direct the routing of his business he can accommodate himself to those different markets in better shape than if the routing is in the hands

of somebody else. More important, however, is that frequently we can make sale if we can make a delivery and we cannot make sales without. It is true that in a very large measure under the present order of things we are permitted to have the final destination but not entirely so. Again, our experience has been that the shipments require attention in transit, such as ventilation, when they are not under refrigeration, round housing in cold weather, prompt movement and prompt diversions when they are necessary, without which in fact we cannot market the fruit at all, and our experience has been that we could get that prompt service on the part of the connecting lines if they were under the fear of losing the business if they did not give it. Under the present order of things, of course, we have no hold upon the connecting lines whatever and no means of forcing good service, prompt service or attention to our shipments in transit or anything of the sort.

Mr. HUNSAKER: Are there any other reasons you have to offer?

Mr. NAFTZGER: I think I have stated the principal reasons.

Mr. HUNSAKER: State whether or not it is necessary to the successful conduct of this business that you should have rapid transit? I ask you that question because the answer of the Southern Pacific denies that it is.

Mr. NAFTZGER: Yes sir, I think it is very necessary.

299 Mr. HUNSAKER: Why?

Mr. NAFTZGER: Because the product is perishable, the fruit is perishable and delay is apt to cause decay of the fruit.

Mr. HUNSAKER: Which is the most direct route, the Santa Fe or Southern Pacific for the carriage of these products from Los Angeles to territories tributary to it to Chicago.

Mr. NAFTZGER: The Santa Fe is shorter and more direct.

Mr. HUNSAKER: Do you know from experience how much the difference in time required for transportation of a car of oranges between the points I have mentioned is?

Mr. NAFTZGER: I should say ordinarily one or two days difference.

Mr. HUNSAKER: In favor of the Santa Fe road?

Mr. NAFTZGER: Yes sir; that is a variable thing, however.

Mr. HUNSAKER: State what you know, if anything, about the routing of cars over the Southern Pacific by the Santa Fe to Chicago points since the 1st of January, where the shipper had requested the Santa Fe people to route over their own line.

Mr. NAFTZGER: Well, I think I only know of a couple of instances of that kind that have fallen under my notice.

Mr. HUNSAKER: State what you know about it?

Mr. NAFTZGER: I think we had two cars routed on the Santa Fe and by them forwarded over the Southern Pacific against the wish of the shipper.

Mr. HUNSAKER: Where were these cars loaded?

Mr. NAFTZGER: I think we got one at Ontario and one at Azusa, possibly more.

Mr. HUNSAKER: Did you have any conversation with any
300 representatives of Santa Fe system in reference to that matter.

Mr. NAFTZGER: Yes sir, I had with Mr. Chambers.

Mr. HUNSAKER: Who is Mr. Chambers?

Mr. NAFTZGER: He is the general freight agent of the Southern California railway.

Mr. HUNSAKER: State what the conversation you had with him on the subject was.

Mr. NAFTZGER: Well, I objected to having these cars go out by the Southern Pacific, they having been loaded on the Santa Fe tracks and these particular cars that I refer to now were some fruit that was hauled from a point on or adjacent to the Southern Pacific and Mr. Chambers stated that he would turn those cars over to the Southern Pacific, but afterwards told me that he would not.

Mr. HUNSAKER: Did he state to you why he would turn them over to the Southern Pacific?

Mr. NAFTZGER: Yes sir; he said it would not be fair to permit a shipper to haul his fruit over from the Southern Pacific and ship it on their road.

Mr. HUNSAKER: They did not want that sort of traffic?

Mr. NAFTZGER: I do not think he stated it in those terms.

Mr. HUNSAKER: Were you present at a conference held at the chamber of commerce in this city on the 12th of February last at which Mr. Paul Morton second vice president, W. A. Bissell, assistant traffic manager, and E. Chambers, representing the Santa Fe Company, J. C. Stubbs, third vice president, William Sproule, freight traffic manager and G. W. Luce, assistant general passenger agent, representing the Southern Pacific Company, yourself, repre-
301 senting the Southern California Fruit Exchange; Mr. H. S. Moulton, representing the Consolidated Fowarding Company, W. A. Perry, representing the Mutual Shippers' Association, J. S. Slauson, president of the chamber of commerce and Mr. Keopfli of the board of trade of this city and Frank Simpson of the Merchants and Manufacturers Association were present?

Mr. NAFTZGER: I was.

Mr. HUNSAKER: Do you know whether a stenographic report of the proceedings of that conference was made?

Mr. NAFTZGER: Yes sir; there was.

Mr. HUNSAKER: Who made the report.

Mr. NAFTZGER: Mr. Armitage.

Mr. HUNSAKER: Did Mr. Armitage subsequently transcribe his shorthand notes?

Mr. NAFTZGER: He did.

Mr. HUNSAKER: And furnished you a copy?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: Is this the paper which you handed me a tran script furnished you by Mr. Armitage?

Mr. NAFTZGER: It is.

Mr. HUNSAKER: Complainants offer this transcript of proceedings of that meeting for the purpose of showing the declarations and admission of Mr. Stubbs and Mr. Morton.

Mr. HERRIN: We object to the admission of that alleged transcript. We are informed that it is not a correct transcript and we think the only proper way to prove it in order to avoid controversy is to call the reporter, because I am informed that there are important omissions made in the transcript. We have examined it and dispute its correctness.

Mr. HUNSAKER: I will ask Mr. Naftzger to stand aside and will call Mr. Armitage.

302 (5.) The letter of July 24, 1899, found at pages 28 to 29, volume 3, testimony taken in 1900.

The letter last offered is as follows:

"Fruit Growers Express.

CHICAGO, July 24, 1899.

Mr. W. Sproule, freight traffic manager, Southern Pacific Co., care Holland house, New York.

DEAR SIR: Referring to your recent conversation with Mr. Schumacher, I expect to be here this week and will make it a point to come to New York on short notice if you consider it advisable.

In this connection beg to state that in the interest of harmony, and for reasons which I will explain some time when I see you, I desire to suggest that it might be well for your company to take 250 more cars from the C. F. X., and the Santa Fe the same, provided always that the number of their cars used does not exceed the number of ours either in your own or the Santa Fe's service.

Yours truly. GEO. B. ROBBINS."

303 (6.) The title page and testimony of L. J. C. Spruance, at pages from 28 to 41, inclusive, as indicated by a pencil mark, testimony taken before the commission in 1903.

The testimony last offered is as follows:

"Before the Interstate Commerce Commission.

THE CONSOLIDATED FORWARDING COMPANY
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company.

THE SOUTHERN CALIFORNIA FRUIT EXCHANGE
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA & Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company; The Continental Fruit Express Company and Armour & Company, Intervenors.

A. E. BAGLEY, Reporter.

Tuesday, April 7th, 1903.

304 L. J. C. SPRUANCE, a witness produced before the commissioner, having been first duly sworn, testified as follows:

Direct examination.

By Mr. CALL:

Q. Do you have charge of the routing yourself, or does the railroad do the routing?
A. The railroad does it.
Q. Do you know then of your own knowledge over what lines your cars go when they leave here for eastern points?
A. The railroads I believe, will furnish us with the routing after the cars have left.
Q. When you ship, say, over the Santa Fe road, do your cars always go out over that road, or do they go out sometimes over the Southern Pacific road?
A. Sometimes over the Southern Pacific.
Q. How is it when you ship over the Santa Fe?
A. Sometimes over the Santa Fe.

By Mr. CALL:

Q. You say that when you ship over the Southern Pacific that generally you get—they furnish you with Armour cars?
A. Generally. In all cases, I think, when we ship over the Southern Pacific.
Q. When you ship over the Santa Fe they usually furnish you with Santa Fe dispatch cars?
A. Generally.

Q. Is that an invariable rule with the Santa Fe?
A. No.
Q. They sometimes furnish you with Armour cars—the
305 Santa Fe furnishes you with Armour cars sometimes?
A. Yes sir.
Q. And any other kind of cars?
A. Yes, Santa Fe cars and Armour cars.
Q. And the fruit, you say, goes out, then—in shipping over the Santa Fe you say, using Armour cars, they generally send that over the Southern Pacific?
A. We have had our shipments go that way in Armour cars.
Q. And in shipping over the Southern Pacific lines, you don't ever get anything but Armour cars?
A. No, nothing but Armour cars."

(7.) Testimony of D. W. McLeod, at pages 63 to 75, as indicated by a pencil mark, in testimony taken before the commission in 1903.

The testimony last offered is as follows:

"D. W. McLeod, a witness produced before the commissioner, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Call:

Q. Your packing house is at Riverside?
A. At Pachappa.
Q. Have you any other packing house?
A. No sir. Our company is known as the Riverside Navel Orange Company, a branch of the Southern California Fruit Exchange.
Q. What lines of railroad do you ship by?
A. We originate on the Santa Fe.
306 Q. The Southern Pacific has no line there?
A. No sir.
Q. What kind of refrigerator cars do you use?
A. We use both kinds, Armour cars and S. F. R. D., Santa Fe Refrigerator Despatch, I believe is the name of it.
Q. Those cars are furnished you promiscuously by the Santa Fe road?
A. By the agent at Riverside. We order a car and he sends in what car he chooses.
Q. From the Santa Fe?
A. Yes sir, from the agent at Pachappa now.
Q. He is the Santa Fe agent now?
A. He is the Santa Fe agent now.
Q. He furnishes one kind of cars sometimes and then another?
A. In the early part of the season we received altogether Santa

panies to furnish at the beginning of this season, amounting to 4000 cars.

A. Well, if there were any arrangements of that kind made, Mr. Schumacher probably made them; I did not make them.

Q. Well, was not there an understanding reached between the Continental Fruit Express Company and Armour & Company, or the Fruit Growers' Express, as to the proportions in which that equipment should be furnished by those two companies?

A. Well, Judge Hunsaker, I will briefly say that as I understand the matter, after years of competition and friction and litiga-
281 tion and disputes between Armour & Company and the Continental Fruit Express, the Continental Fruit Express decided that it was satisfied with a certain percentage of the business. Armour & Company apparently decided that they were satisfied with a certain amount and they are trying to work along those lines. All this testimony and these questions that are being asked me seem to me entirely irrelevant to this complaint pending before the Interstate Commerce Commission, and with all respect for the commission and for the complainants, I must decline to go into any more of the details of our private business elsewhere which are not relevant to this controversy in southern California."

282 (4.) So much of the testimony of witness Naftzger as is indicated by pencil marks at pages from 5 to 26, inclusive, and at page 97, in volume 3 of testimony taken in 1900.

The testimony last offered is as follows:

283 A. H. NAFTZGER, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Mr. HUNSAKER: What is your name?

A. A. F. Naftzger.

Mr. HUNSAKER: And your business?

Mr. NAFTZGER: President and manager of the Southern California Fruit Exchange.

Mr. HUNSAKER; How long have you been president and manager of the Southern California Fruit Exchange?

Mr. NAFTZGER: I have been president ever since its organization in 1895, I think, and I have been the manager for about three years.

Mr. HUNSAKER: What business is the Southern California Fruit Exchange engaged in?

Mr. NAFTZGER: Marketing citrus fruit for the various exchanges of southern California for whom they exchange acts as marketing agent.

Mr. HUNSAKER: How many subordinate exchanges are there or local exchanges.

Mr. NAFTZGER: Twelve, I believe.

Mr. HUNSAKER: In what counties.

Mr. NAFTZGER: One in San Diego county, one in Orange county, two in Riverside, two in San Bernardino, five in Los Angeles county,

one in Santa Barbara county. We also act as selling agent of N. W. Blanchard of Ventura and the Fillmore Citrus Association, I think it is.

Mr. HUNSAKER: That is also in Ventura county.

Mr. NAFTZGER: That is in Ventura county, yes sir.

284 Mr. HUNSAKER: How many growers do these exchanges represent?

Mr. NAFTZGER: About seventeen hundred growers of oranges and lemons.

Mr. HUNSAKER: And the Southern California Fruit Exchange markets the product of those growers?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: How long have you lived in southern California?

Mr. NAFTZGER: A little over fifteen years.

Mr. HUNSAKER: What connection with the citrus fruit industry had you before you became president of the Southern California Fruit Exchange?

Mr. NAFTZGER: For some years before the incorporation of the Southern California Fruit Exchange I was the president of a non incorporated association of various growers in marketing fruit. I think we began in 1892. Prior to that I had been in other business.

Mr. HUNSAKER: Have you been a fruit grower?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: For what length of time and where?

Mr. NAFTZGER: I have been a fruit grower since about 1890, I think, at Riverside. I have an orchard at Riverside.

Mr. HUNSAKER: An orange orchard?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: Have you devoted considerable study to the citrus fruit industry of California and noticed its development

285 and studied its conditions in marketing the citrus fruit production of southern California?

Mr. NAFTZGER: I have.

Mr. HUNSAKER: State in a general way the growth and development of the orange industry in southern California from the time you first became acquainted with it to the present?

Mr. NAFTZGER: Well, the active shipment of citrus fruit, oranges particularly, from southern California began, I think, before I came here, although the business was not large at that time. My first experience was with the year 1885, the crop of 1885. I don't remember its extent. Only a few hundred cars as I recollect were shipped to eastern points. From that on the business grew steadily. In 1890 or 1891, I think, the season of 1890 or 1891, there were approximately five thousand cars and the business has fluctuated since then, some years showing a steady growth but some years dropping back a little from the previous year, the shipments ranging, however, from five thousand cars up to fifteen thousand cars. The largest year was the year 1898 and the year 1899. The last year

before this present one when the shipments reached a little over 15,000 cars.

Com'r FIFER: From what point?

Mr. NAFTZGER: From all points in southern California.

Mon'r CLEMENTS: Does that include oranges and lemons.

Mr. NAFTZGER: Yes sir, oranges and lemons.

Mr. HUNSAKER: What counties?

Mr. NAFTZGER: Santa Barbara, Ventura, Los Angeles, Orange, Riverside and San Bernardino.

Com'r CLEMENTS: What portion of that is lemons?

286 Mr. NAFTZGER: Well, I should say that nearly 14,000 cars of that were oranges.

Mr. HUNSAKER: During what months are the shipments of oranges made?

Mr. NAFTS—: Our shipments begin the last days of November and continue until the orange business—continue until July, sometimes running into August, becoming very light, however, in that season. The lemon shipping season is from May to October. However, the lemons are somewhat distributed all through the year.

Mr. HUNSAKER: What time during the shipment of oranges is the season at its height—most active?

Mr. NAFTZGER: From the first of February until the 1st of May, ordinarily.

Mr. HUNSAKER: Do you know approximately how many cars have been shipped this season, cars of oranges?

Mr. NAFTZGER: Approximately 10,000 cars.

Mr. HUNSAKER: Up to this time?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: And what will probably be the total number of cars?

Mr. NAFTZGER: I think the shipment of oranges will reach 13,000 cars or a little in excess of that and lemon crop is difficult to estimate because the lemon trees are in bloom and it is hard to say what the summer and later clippings will amount to—probably from fifteen to twenty-five thousand carloads.

Mr. HUNSAKER: You estimate, then, that the output of oranges will equal last year.

287 Mr. NAFTZGER: I think they will exceed last year's for the reason I have given you. The number of actual carloads shipments, the increase in the minimum is eight and one-third per cent. or from 24,000 to 26,000 pounds, which will make a larger tonnage for the same number of carloads.

Mr. HUNSAKER: Prior to this season the minimum loads to be shipped in a car was 24,000 pounds?

Mr. NAFTZGER: Yes sir; for several years before that it was less.

Mr. HUNSAKER: When was a change made in that respect?

Mr. NAFTZGER: The change made to 26,000 pounds?

Mr. HUNSAKER: Yes sir; 24,000, when was it raised?

Mr. NAFTZGER: I think it was made on the 15th of November possibly on the 1st. I will not be absolutely certain as to the day but it was about that time.

Com'r CLEMENTS: Last November?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: From your experience as the shipper of citrus fruit, particularly of oranges, state whether or not 26,000 pounds can be advantageously shipped and taken care of in a carload?

Mr. NAFTZGER: Well, that depends on several circumstances. It depends somewhat upon the size of the car and its construction and it depends somewhat upon the markets that are sought to be used for the sale of the shipments.

Mr. HUNSAKER: Well, as applied to the cars which are furnished for the shipment of these fruits, what would you say—those that are now furnished?

288 Mr. NAFTZGER: Well, that is a difficult question. We have found in our actual experience less satisfactory results in the carrying quality of the shipments than ever before in my recollection. In other words, we have more decay in transit, more heating and decay of fruit in transit.

Mr. HUNSAKER: Since the minimum has been increased?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: Can you state any reason why that should be so?

Mr. NAFTZGER: Well, we attribute it to the increased quantity in the car, the bulk of the fruit in the car, overloading them. A large proportion of the cars in use must necessarily be loaded differently from what they were before. The increase is twenty-eight boxes. Under the 24,000 pound minimum, most cars in use would take the minimum with two tiers of boxes standing on end in the car. Under the increased minimum a very large proportion of them will not take the minimum without putting some of the boxes on top, and our experience has been that the top tiers, those that are laid on top are apt to show decay.

Mr. HUNSAKER: To a greater extent this season than ever before?

Mr. NAFTZGER: As I say, we have seldom been required to put any on top. A large proportion of the cars, we have not been compelled to put them on top and we have had a larger percentage of decay, I think, than in any previous season. Of course all seasons towards the latter part of the season they are apt to show decay.

289 Mr. HUNSAKER: State what special experience you have had, if any, in the matter of refrigeration and if you have ever had any connection with a refrigerator car line in the shipment of citrus fruit—state what experience you have had.

Mr. NAFTZGER: During the years 1895 and 1896 I think I had charge or was president of the Overland Fruit Dispatch, which operated some refrigerator cars for the transportation of fruit, particularly for the Southern California Fruit Exchange and we iced and refrigerated during those seasons a good many cars, probably a thousand cars—I do not remember exactly how many.

Mr. HUNSAKER: When did you cease to operate the Overland Fruit Dispatch?

Mr. NAFTZGER: In the summer of 1897, I think.

Mr. HUNSAKER: Under what circumstances?

Mr. NAFTZGER: The expiration of our contract with the railroad—the Southern Pacific and the Atchison.

Mr. HUNSAKER: Did you seek a renewal of your contract?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: State what steps you took to procure a renewal of that contract.

Mr. NAFTZGER: I had the matter up with the officials of the railroad.

Mr. HUNSAKER: State what you did and what the result was.

Com'r CLEMENTS: With what railroads?

Mr. NAFTZGER: My conferences were with the Southern Pacific C. F. Smurr, then freight traffic manager of the Southern Pacific and W. B. Biddle, freight traffic manager of the Santa Fe, although I think I had some conferences with other officials—it was chiefly with them. The matter was under consideration for several months, I should say, but they finally declined to renew
290 our contract.

Mr. HUNSAKER: What reason if any, was assigned for the declination to renew the contract?

Mr. NAFTZGER: The only reason that was ever given me was expressed perhaps in a statement made that it was not in the interest of the Southern Pacific Company—that was Mr. Smurr's statement in a letter. Mr. Biddle stated that they did not find it to their interest to renew their contract and declined to do so.

Mr. HUNSAKER: That was when?

Mr. NAFTZGER: About midsummer 1897 when I had the letter from Mr. Smurr. I should have to refer to the letter for the exact date, and the last conference I had with Mr. Biddle with reference to the renewal of the contract I think was the last day of October or in the month of November, 1897. I had further talks with him afterwards on the subject, but not in reference to the renewal of that particular contract.

Mr. HUNSAKER: Have you at any time since you were refused a renewal of that contract sought to obtain from the railroad company permission to operate a fruit car line?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: How often?

Mr. NAFTZGER: It is difficult to say. I have had the matter up with them frequently. I remember a particular interview with Mr. Biddle and Mr. Morton.

Mr. HUNSAKER: Of the Atchison, Topeka and Santa Fe?

Mr. NAFTZGER: Yes sir. I think that was in November, 1898.

Mr. HUNSAKER: State in a general way what was said at that time in reference to giving you the privilege of operating a
291 car line?

Mr. NAFTZGER: I stated that I believed that we had a right

to the same privileges granted any other shipper to operate cars for the shipment of our products, representing the Southern California Fruit Exchange, the largest shipper of citrus fruit, that we were entitled to as favorable conditions as were accorded any other shipper, and it was my understanding that to at least one, of our competitors in the business the privilege to operate had been granted.

Mr. HUNSAKER: Did you state to Mr. Biddle and Mr. Morton to whom you referred as one of your competitors?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: What did he say?

Mr. NAFTZGER: I said that they had granted the privilege to Mr. Earl to operate in his interest and we deemed that we ought to be entitled to a like privilege.

Mr. HUNSAKER: You mean Mr. Edwin T. Earl?

Mr. NAFTZGER: Yes sir, Mr. Edwin T. Earl.

Mr. HUNSAKER: State the result of that conference and what those gentlemen said to you?

Mr. NAFTZGER: They simply said they could not grant it.

Mr. HUNSAKER: Did they assign any reason why they could not grant you the privilege?

Mr. NAFTZGER: Except to say that they had all the cars they could use advantageously in the business and did not want to multiply cars on their tracks.

Mr. HUNSAKER: Since the fall of 1897 or November 1, 1897, what ventilator or refrigerator cars used for shipment of citrus fruit
292 on southern California have the Southern Pacific Company and the Atchison Topeka & Santa Fe system used or had.

Mr. NAFTZGER: The only cars offered to us for shipment were the cars known as the Fruit Growers Express or Armour cars and C. F. X. cars and the Santa Fe Fruit and Refrigerator or Santa Fe Refrigerator Line cars.

Mr. HUNSAKER: Those were the only refrigerator cars that had been offered or tendered to you in which to make your shipments at that time?

Mr. NAFTZGER: Yes sir.

Com'r CLEMENTS: What is C. F. X.?

Mr. NAFTZGER: Continental Fruit Express.

Mr. HUNSAKER: Do you know whether Edwin T. Earl is connected with that corporation.

Mr. NAFTZGER: I do not know that I can say that I know it except by common report.

Mr. HUNSAKER: What do you know by common report.

Mr. NAFTZGER: It has always been recognized by fruit shippers that Mr. E. T. Earl established and owned the C. F. X. car line.

Mr. HUNSAKER: After November, 1897, did you make any effort to obtain permission to put on refrigerator cars to be operated over the Southern Pacific line?

Mr. NAFTZGER: I do not recall any particular demand that I ever made for the privilege. I did state to Mr. Sproule, the traffic man-

Fe cars. We have not been shipping for about three weeks, but previous to that time we received in every case, Southern Pacific cars, and I always took the precaution——

Q. Prior to three weeks ago, you received what kind?

A. Previous to three weeks ago, before we shut down,—we received for three or four weeks before that, Southern Pacific cars; but up to that time we had Santa Fe cars right through the whole season. Three or four weeks ago—I don't remember the date——

Q. Do you know what lines of road your shipments go over?

A. We usually know; that is, we found out the second day. We don't know the date it goes out, only we know this: If it is a Southern Pacific car the agent notifies us that that is a Southern
307 Pacific car and it must go Southern Pacific, and so we note on the billing, "Via the S. P.," so that there will be no mistake made in the local office.

Q. The cars that are called Armour cars, that is the C. F. X. and——

A. F. G. E.'s.

Q. Those car lines are called the Armour cars?

A. Yes sir, we call them technically the Armour cars. We have another car, C. F. T., which was an old kind that we used to have some years ago.

Q. When you were furnished with Armour cars, by the Santa Fé road, you were obliged to send them out or they would take them out over the Southern Pacific road?

A. Over the Santa Fé to Colton, and then transfer at Colton to the Southern Pacific.

Q. You prefer to ship over the Santa Fe lines, I believe?

A. We do, because we are on the line and we prefer to use the Santa Fé cars. Another reason we prefer to use the Santa Fé cars is the most of them are forty-foot cars, and there are a good many of these F. G. E.'s, that come in here that are short cars, and we have to load the minimum in, and we only get a 29-tier in the car instead of a 32-tier, and consequently the ventilation is not so good.

Q. How does the cost of the marketing of oranges compare this year with last year in the East?

A. I think it has been a little worse this year than last year. My impression of it is that it is worse, although last year we had a poor market.

308 Afternoon Session, 2 p. m.

D. W. McLeod, was recalled and testified as follows:

Direct examination (resumed).

By Mr. Call:

Q. I understood you to say, Mr. McLeod, that in shipping you used the Armour cars and also the Santa Fe Dispatch cars?

A. Yes sir.

Q. Refrigerator cars. Now state, as near as you can, what proportion of each you used, and have used during the last season?

A. Well, I couldn't answer that question positively, but I should say one-third of what we call the Armour cars; that is, not S. F. R. D. We call the Santa Fe cars the S. F. R. D.'s simply and those that come to us outside of them we recognize them as Southern Pacific cars, because the agents tell us they will be shipped over the Southern Pacific lines, and I think one-third of what I have shipped so far has been over the Southern Pacific.

Q. The Santa Fe is the only line that has a line to your packing house?

A. Yes sir.

Q. Therefore you ship over the Santa Fe?

A. Yes sir.

Q. The Santa Fe a third of the time furnishes you with Armour cars?

A. This season I am speaking of.

Q. This season with Armour cars. What line of railroad do those Armour cars go over?

309 A. They go over the Southern Pacific. We have positive orders to enter on our shipping receipt via the S. P. in every case, because we always take up every car that is different from the Santa Fe, and take up with the agent at Riverside and ask him Is this a Santa Fe car or S. P. car, and he tells me how to route it.

Q. Which line do you prefer to ship over?

A. I prefer to ship over the Santa Fe because we usually get better time, and various other things come into consideration, and nearly all our fruit goes to the northwest and it is easier for diversions than to send it to El Paso and then send it north. I think the matter of time this year has been very little different in either line."

(8.) Testimony of witness Everest, commencing at page 126 and ending at page 128, of testimony taken in 1903, as indicated by a pencil mark.

The testimony last offered is as follows:

"ARTHUR J. EVEREST, a witness produced before the commissioner, having been first duly sworn, testified as follows:

Direct examination.

By Mr. CALL:

Q. What is your name?

A. Arthur J. Everest.

Q. You live at Riverside?

A. I live at Arlington.

Q. What is your occupation?

310 A. Manager of the Everest rancho as a grower and shipper of oranges.

Q. How long have you been engaged in the growing and shipping of oranges?

A. Well, personally, I have had charge of the grove for about eight years.

Q. Do you do any packing?

A. Yes sir.

Q. Where is your packing house?

A. On the grove at Arlington.

Q. At Arlington. How many acres of fruit did you ship last year?

A. We had a short crop. We shipped about fifty cars.

Q. How much this year?

A. We probably have a little more than that. We have shipped about forty-five.

Q. Do you buy of others and ship, or do you ship only your own oranges?

A. Ship only our own oranges.

Q. What line of railroad goes through Arlington?

A. The Santa Fe.

Q. That is the only road?

A. That is the only road.

Q. What cars do you use; what refrigerator cars?

A. S. F. R. D. as far as possible.

Q. That is the Santa Fe Dispatch?

A. Refrigerator Despatch.

Q. Supposed to belong to the Santa Fe railroad?

A. I presume they do.

311 Q. Do you ever use any other cars?

A. At times, yes sir.

Q. What cars?

A. I have used the F. G. E., the C. F. X., the C. F. T., and K. C. F. E.

Q. What are the regulations of the Santa Fe concerning the routing of these cars?

A. They route the cars.

Q. Do you route them invariably over the Santa Fe or do they sometimes go by the Southern Pacific?

A. I prefer the Santa Fe. Sometimes they go Southern Pacific against my preference.

Q. Why is that?

A. I don't know, but at times I can't get cars to load that will go Santa Fe and I have to take the S. P. or I am unable to load.

Q. That is the C. F. X.?

A. And F. G. E.

By the COMMISSIONER:

Q. How do those cars get to the Southern Pacific?

A. They go on the Santa Fe to Colton.

Q. Have you had any trouble this year about the time en route of the fruit?

A. Not any more than we have had in the last two or three years."

(9.) Testimony of A. G. Stearns, commencing at page 244 and ending at page 247 of testimony taken in 1903.

The testimony last offered is as follows:

312 "A. G. STEARNS, a witness produced before the commissioner, having been first duly sworn, testified as follows:

Direct examination.

By Mr. CALL:

Q. State your name, residence and occupation?

A. A. G. Stearns, live at Highlands, fruit shipping business.

Q. How long have you been in the fruit shipping business?

A. On my own account for five years; I have been connected with it for twelve years.

Q. Where is your packing house?

A. In Highlands.

Q. At any other place?

A. We have a packing house in Redlands as well as Highlands.

Q. What lines of railroad run to your packing house at Highlands?

A. The Santa Fe.

Q. How many cars of fruit did you ship last year from Highlands?

A. 218.

Q. How many have you shipped this year up to date?

A. Why, about the same amount.

Q. How was it year-before-last?

A. We had shipped more up to this time.

Q. How did it run the year before that?

A. Well, our shipments were lighter; our trees were younger, and we didn't have as big a crop.

313 Q. You usually ship about 400 cars?

A. Out of the two houses we run from 360 to 450 cars.

Q. How much of that is shipped from Highlands?

A. The majority of it. Our Redlands house generally puts out 150 or 175 cars.

Q. What railroad are you on at Highlands?

A. Highlands; on the Santa Fe.

Q. And at Redlands, what track are you on?

A. The Southern Pacific.

Q. What cars are furnished you for your shipping at Highlands by the Sante Fe?

A. Well, mostly S. F. R. D. cars.

Q. Santa Fe Dispatch cars?
A. Yes sir.
Q. And at Redlands, what do they furnish?
A. I think practically all what is known as the Armour cars.
Q. To what points do you ship?
A. We ship to middle West mostly, and New England.
Q. Do you always ship over the Santa Fe from Highlands?
A. Not always, no sir.
Q. Do you always order your shipments made over the Santa Fe, or desire it?
A. We always have preferred it; yes sir.
Q. State if you know whether the Santa Fe railroad at Highlands has diverted your fruit or shipments over the Southern Pacific without your directions?

A. Well, it has not been a matter of my direction. I have
314 placed my order for my cars, for so many cars for loading and the cars come in and they tell me which way they will be routed.

Q. Who directs the routing?
A. The railroad.
Q. Well, how is it at Redlands, when you furnish and turn over your shipments to the Southern Pacific? Do they always ship out over their own line, or do they sometimes route it Santa Fe?
A. Practically all our cars from Redlands have been shipped out over their lines.
Q. All of them?
A. Practically all of them.
Q. What proportion of your cars at Highlands do you think have been sent Southern Pacific?
A. Not a very large portion. There was a time for two or three weeks this year, that practically all the cars furnished us were Southern Pacific cars.
Q. Well, as to those cars that are called Santa Fe Dispatch, do you know what route those cars really go over?
A. I do when I get my bill of lading the day after the car goes out.
Q. Do you always get a bill of lading showing the route?
A. Yes sir; all the cars going via Santa Fe lines. They always issue a bill of lading showing the routing, but not on cars going via Southern Pacific.
Q. When you ship from Highlands and the cars go via Southern Pacific they don't furnish you the routing?
A. No sir, I have cars that went out this year that I didn't know which way they went or where they were in transit. I was unable to find out anything from the railroads about how they went
315 or where they were.

Q. Does the Santa Fe railroad do the shipping for the country and vicinity of Highlands, the whole of it?
A. Yes sir.

Q. None of that business goes over the Southern Pacific excepting through the Santa Fe?

A. Excepting through the Santa Fe."

(10.) Testimony of Edward Chambers, commencing at page 274 and ending at page 431, testimony taken in 1903.

The testimony last offered is as follows:

"EDWARD CHAMBERS, a witness produced before the commission, having been first duly sworn, testified as follows:

Direct examination.

By Mr. CALL:

Q. State your name, residence and occupation?

A. Edward Chambers, general freight agent of the Santa Fe lines west of Albuquerque, residence Los Angeles.

Q. General freight agent of lines where?

A. West of Albuquerque; of the Santa Fe lines west of Albuquerque.

Q. You have charge of the movement of all freight over those lines, do you, west of Albuquerque, going and coming?

A. I have charge of the freight traffic, yes sir; the details of the freight traffic.

Q. Do you have anything to do with the making of rates?

A. Something, yes sir.

316 Q. What is the extent of your business in the making of rates?

A. Well, I recommend most of the rates that are made in the territory that I have jurisdiction over, the local rates particularly.

Q. Did you recommend the present rates that are in force governing shipments of citrus fruits.

A. No sir; that was before my time as general freight agent.

Q. Those rates have continued ever since the same, have they—since you have been in your present position?

A. Yes sir. I think the rates were changed while I was local agent at San Diego, I think in 1886. I think up to 1886 the rate was $1.50 a hundred on oranges in carload lots to eastern points.

Q. Since 1886 it has been $1.25?

A. $1.25, yes sir.

Q. You never have recommended any change?

A. No sir.

Q. Are you aware of the fact that the rates established by the Santa Fe railroad are the same as established by the Southern Pacific?

A. Yes sir.

Q. You have filed a general tariff I believe with the Interstate Commerce Commission, showing what those rates are for both Southern Pacific and Santa Fe?

A. Yes sir; a joint tariff.

Q. And showing an identity of rates from the same points?

A. Yes sir.

317 Q. To and from the same points?

A. From the same competitive points; not from all points.

Q. Tell the commissioner how those rates were established?

A. I don't know what you mean. The $1.25 rate applies from all points in California, and it don't apply from all points over the Santa Fe lines or over the Southern Pacific lines, but over either one of the lines it applies from all the points on the rails of either company. That is the San Diego territory—down there in San Diego the rates don't apply from there over the Southern Pacific.

Q. It applies from all this orange country?

A. Yes, all California points.

Q. What I would like to know is how you went to work to establish those rates, how they happened to be that way?

The COMMISSIONER: I don't understand the last answer exactly. You say rates from San Diego territory would not apply over the Southern Pacific lines. You mean by that that a shipment from there must go via the Santa Fe?

A. Via the Santa Fe.

Q. And if that shipment is intended for some point reached only by the Southern Pacific, would that involve a local haul on the Southern Pacific?

A. It would take local rates; the local rate would be charged up to Los Angeles.

Q. Suppose that a resident in that territory wanted to ship, for instance, to New Orleans, could he reach New Orleans over the Santa Fe?

A. Reach New Orleans over the Santa Fe.

Q. Suppose he desired to reach some point this side of

318 New Orleans on the Southern Pacific?

A. A local point?

Q. A local point.

A. Well, that would be shipped to Colton, take the local rate to Colton, and the Southern Pacific from Colton to the local point.

By Mr. CALL: State if you know by what method the rates established over the Santa Fe were established?

A. Well, the basis for making the rate I think was to put all the producing territory on an equal footing; that is, all orange producing territory in California, and charge the same rates to the eastern markets.

Q. I don't know that you understand me. What I would like to ascertain is what the basis for your establishing of those rates is? Why didn't you make the rate $2.50 a hundred or $5. a hundred instead of $1.25?

A. I couldn't say what the basis was at the time it was made. I didn't have anything to do with making it.

Q. Do you know who made it, who made those rates?

A. Well, I couldn't say.

Q. You have nothing to do with the making of those rates?

A. I had nothing to do with the making of the $1.25 rate.

Q. You have never endeavored to change them since they were made?

A. No sir.

Q. Can you state what the relative mileage is of the Southern Pacific and the Santa Fe in the orange belt of southern California?

A. It is about the same; it is very nearly equally divided.

319 Q. What is that mileage, do you know?

A. I think it is about in the Southern California citrus fruit belt—I think it is somewhere about 350 miles.

Q. To each road?

A. Each road has about 350 miles in the citrus fruit belt.

Q. You have heard the testimony here of the large number of witnesses that they prefer to ship over the Santa Fe instead of the Southern Pacific?

A. Yes sir.

Q. Is that your view that that is the general preference of shippers?

A. Well, most of those shippers were located on the Santa Fe lines.

Q. You have heard the testimony where they are on both lines that they invariably prefer to ship over the Santa Fe?

A. Yes sir.

Q. You say you think they would?

A. I say I heard the testimony.

Q. Do you think that is so?

A. I think so.

Q. Have you any record to show what amount of cars of citrus fruit you have shipped over the Santa Fe lines during the last four or five years? Show what you have shipped from month to month or from day to day or from week to week?

A. I think it shows from month to month.

Q. Well, now we would like to know what has been shipped from month to month over the Santa Fe road commencing with the season of 1898 and 1899 or the number of cars shipped over the Santa Fe from month to month. Can you have that made and produced?

320 A. Yes sir; I think I have got it right here. I can read it right off.

Q. If you have got it here just give us that if you can do so?

The WITNESS: Do you want the season of 1898?

The COMMISSIONER: How far back does that statement go?

A. This goes to 1897.

The COMMISSIONER: You had better give it all then.

Mr. CALL: Put in whatever you have got there, 1897 and 1898. That commences before the routing rule. Begin with the season of 1897 and 1898.

A.—

November	260 carload-.
December	580 carloads.
January	449 carloads
February	941 carloads
March	1375 carloads
April	1338 carloads
May	783 carloads
June	751 carloads
July	283 carloads
August	190 carloads
September	106 carloads
October	80 carloads, making the total for that season of
	7136

By Mr. HERRIN:

Q. How do you divide the season?
A. Beginning November 1st, 1897.
Q. You begin November 1st of each year?
A. November 1st. Those were divided 5561 under ventilation and 1575 under refrigeration. Now 1898–1899.

321

November	68
December	565
January	780
February	644
March	925
April	857
May	354
June	311
July	101
August	79
September	60
October	13
Total	4866

4047 under ventilation, and 819 under refrigeration.

The season of 1899 and 1900:

November	199
December	819
January	1055
February	972
March	1600
April	1293
May	977
June	663
July	328

August	231
September	158
October	102
Total	8397

Under ventilation 5908; refrigeration 2489.

322 The season of 1900 and 1901:

November	298
December	975
January	1140
February	1572
March	1870
April	2051
May	1481
June	991
July	810
August	223
September	125
October	167
Total	11706

Under ventilation 6134; refrigeration 5572.

The season of 1901–1902:

November	438
December	1133
January	859
February	1013
March	1417
April	1222
May	658
June	421
July	165
August	160
September	85
October	160
Total	7731

323 Under ventilation 5199; under refrigeration 2532.

So far for the season of 1902–1903 up to March:

November	236
December	1120
January	1126
February	989
March	1730
Total	5201

By the COMMISSIONER:

Q. Have you given your shipments of all kinds of citrus fruits or simply oranges?

A. Oranges and lemons are compiled together. Lemons are a very small part of the total.

Q. Are those shipments which are made in June and July oranges?

A. Yes sir, largely oranges.

Q. Have those oranges remained on the tree until that time?

A. Yes sir; late varieties of seedlings shipped as late as November.

By Mr. HERRIN:

Q. Don't some of the oranges—are not some of the oranges shipped in November grown the season before?

A. Yes sir; a great many in August and November.

Q. None of them as late as December though?

A. No.

By Mr. CALL:

Q. The Santa Fe filed with the Southern Pacific a joint tariff with the Interstate Commerce Commission for the present year, didn't they; that is it is the same tariff that has been in force for some time?

A. Yes sir.

324 Q. Since how long, do you remember?

A. I couldn't say; the present tariff I think was reissued a couple of years ago, but the rates are the same.

Q. You think the last tariff was filed about two years ago, the general joint tariff?

A. I couldn't say as to that.

Q. Have you any copies of that joint tariff?

A. Yes sir.

Q. I wish you would produce the last one that was filed with the commission. They have it on file in their office, but I would like to make it part of the record in this case.

A. I will do that. I don't think I have any of them with me, but we have plenty of them over at the office.

Q. You said you had nothing to do with the establishing or making of rates?

A. Of the $1.25 rate on oranges.

Q. Who has charge of the establishing and making of rates for the Santa Fe Railroad Company?

A. The freight traffic manager, the vice-president in charge of traffic.

Q. Mr. Paul Morton?

A. Yes sir; and Mr. Biddle.

Q. Did it ever occur to you that there was an identity of rates be-

tween the Santa Fe and the Southern Pacific to all common points? Of course you would notice that?

A. I know it.

Q. Do you know how that happens that they become common rates?

A. I suppose they were made after conference with each other.

325 Q. The traffic management of the Southern Pacific and the traffic management of the Santa Fe consulted together and agreed upon those rates?

A. There are a number of lines parties to the tariff. All transcontinental lines are parties to that tariff. Probably all conferred together in making the rate.

Q. Do you know the method by which they arrived at the rates that were fixed? What the basis was?

A. No, I couldn't say. It was established before I took charge.

Q. Do you know how those rates are changed? Do you know the method upon which any change is made? Suppose you want to change the tariff, how would you or the Santa Fe go about to do it?

A. The Santa Fe would change it.

Q. Well, would they as a matter of practice change the rate themselves?

A. Well, there is nothing to prevent them changing it themselves.

Q. As a legal proposition, but how is it as a matter of practice?

A. They would probably confer with the other lines.

Q. Don't you know that is a fact?

A. Yes sir.

Q. There would be no changes made without a conference?

A. There are very few made without a conference, but there is nothing to prevent it.

Q. Did you ever know them to be made without a conference?

A. Yes.

326 Q. Were they an open rate filed with the Interstate Commerce Commission?

A. An open rate, yes sir.

Q. Do yo mean to say that the Santa Fe has filed a schedule of rates different from that in the general schedule?

A. Yes sir; at times.

Q. What year?

A. I don't know. There have been several instances in the past three or four years. I think one was the grain rates from the east to California points.

Q. Can you tell when that was?

A. I think it was three or four years ago.

Q. I will be very much obliged to you if you will produce that tariff. I would like to examine it. I would like to see a tariff filed by the Santa Fe in which the Southern Pacific was not a party.

A. There are plenty of tariffs. It is full of them.

Mr. BURKS: We object to the introduction of anything in this case that does not relate to the shipment of citrus fruits. This is purely an inquiry into the rates relative to citrus products from California.

The COMMISSIONER: Yes, but I suppose this bears on the question, in Mr. Call's opinion, as to whether you agree on the shipment of freight from California.

Mr. BURKS: The rate on grain from Chicago west——

A. I will explain. Probably that will be clearer to Mr. Call. The agent who has charge of publishing the tariffs—the rule is that he must have the individual authority of each railroad before he
327 makes them a party to the rate. Mr. Countiss was the agent of the individual lines of the association, and that was the rule.

By the COMMISSIONER:

Q. Where is he located? In Chicago?

A. His office is in San Francisco now. All the other tariffs that are not put through Mr. Countiss's office are published by the Santa Fe individually or in connection with some other line.

Q. In a great many parts of the country the railroad files it own tariff. That is, the Southern Pacific would file a tariff showing the rate to be $1.25 and the Santa Fe would file a tariff showing the rate to be $1.25. In order to cover the point you are after, you want to inquire whether any competitive rate has been filed by the Santa Fe without a corresponding competitive rate having been filed by the Southern Pacific. That fact that they don't appear on the same tariff would not necessarily——

Mr. CALL: Of course my question was intended to embrace the idea that it was a different rate from that that had been established in the general tariff.

A. A different rate from that published in the transcontinental tariff.

Q. Was that not co-incident with the filing of a similar rate by the competitive lines?

A. I couldn't say as to that. I don't know; it may have been. Unless there is some good reason to the contrary we usually meet the rates of our competitor.

Q. Do you know of any instance in which the Santa Fe road has changed a rate agreed upon with the Southern Pacific without consulting the Southern Pacific railroad?

328 A. Well, I think I know lots of them.

Q. I am referring to the legal tariff filed with the Interstate Commerce Commission.

A. You mean the trans-continental tariff?

Q. In which a change has been made in the through tariff without consultation with the other roads that are parties to the joint tariff?

A. I think there are instances, yes sir.

Q. Can you name one?

A. I don't know that I could right now. I don't handle all those matters.

Q. Was such change an increase of the tariff?

A. There is a conference about the rates, but some line might look at it different than another line, and if they have power to put the rate in they may exercise that.

Q. You think they have done that in some instances?

A. Yes sir; I know they have.

Q. And made a different rate from that agreed on with the other roads?

A. Yes sir; different rate from that that was in the tariff.

Q. Were those instances where the rate was increased or lowered?

A. Usually lowered.

Q. Was it accompanied by the lowering of the other rates?

A. I think it was, yes sir. There are not many cases of that kind now, though.

Q. Well, do you think such action was taken without notice to and conference with the other roads?

329 A. No, they were usually given notice of what the line that objects or takes independent action is going to do, to give them a chance to meet the rate, if they so desire.

Q. Has any such lowering of the rate taken place in the last year, without notice and conference with the other lines?

A. I think there has; yes sir.

Q. Can you state any such instance?

A. I don't know that I can right now without looking it up, because it is not usually given by me. It is by an officer higher in authority than I am.

Q. If you have any record in your office or at your disposal which would show that the Santa Fe railroad has reduced a rate without conference with the Southern Pacific and without the Southern Pacific at about the same time having *having* reduced likewise, I will be obliged if you will refresh your recollection.

A. I couldn't say. I suppose the Southern Pacific probably reduced the rate at the same time.

Mr. HERRIN: They have to do it or else lose the business.

A. Yes, but I mean cases where the Santa Fe regardless of the objections of other lines to making a certain rate have gone ahead and made the rate independent. They notified the other lines that they were going to take such action. Usually all the other lines would get in and make their rates effective at the same time.

By Mr. BURKS:

Q. The conditions of competition bring about the same rates being established by all roads?

A. Certainly.

Q. And the tariffs being published through Mr. Countiss I
330 believe you say is merely a matter of convenience for all of the roads who might care to refer to those published tariffs.
A. It is a publishing bureau, so to speak.

By Mr. CALL:

Q. What is the business of Mr. Countiss?
A. The business of Mr. Countiss is to compile the tariffs and publish the rates all in one tariff so as to economize.
Q. Does he have anything to do with the fixing of rates?
A. No sir, not a thing.
Q. Where does he get his data from?
A. From the individual lines.
Q. Then there must be an agreement in regard to rates before the data is given?
A. There is usually a conference.
Q. That would be bound to be so, wouldn't it?
A. Each one confirms to each individual. He is the agent of all the lines.
Q. Do you know how the citrus fruit business of the Santa Fe compares with that of the Southern Pacific; that is, the number of cars, and so on?
A. I know, yes sir, something about it.
Q. Which road hauls the most citrus fruit, your road or the Southern Pacific?
A. Well, sometimes one road and sometimes the other.
Q. How does it average from one year to the other?
A. I think for the last two or three years the Santa Fe have hauled the most.
Q. Have you any record of the number of cars hauled by the Southern Pacific?
A. Yes sir.
331 Q. Can you produce it?
A. I think I can, yes sir.
The COMMISSIONER: Have you those figures here now, Mr. Chambers?
A. I have not. I haven't got them here.
The COMMISSIONER: Mr. Herrin, have you those figures on your side?
Mr. HERRIN: Mr. Sproule, I think, was to furnish them.
Mr. SPROULE: I have not got them in the shape in which Mr. Chambers has stated them. I have simply got the totals. I have the total number of cars. We publish every day for the information of the shippers, the number of cars out on both lines, both railroads, put them up for them.
Mr. HERRIN: We will furnish that.
The COMMISSIONER: Can you furnish that to-morrow morning, Mr. Sproule?
Mr. SPROULE: I think so, sir, I will try to.

By Mr. CALL:

Q. How have the shipments of the Southern Pacific compared with the Santa Fe the past orange season commencing November 1st.

A. Up to date?

Q. Yes sir.

A. Of course it is only approximate, but I think the Santa Fe are five to six hundred car loads ahead of the Southern Pacific, I don't remember.

Q. You think the Santa Fe is six or seven hundred carloads ahead?

A. Yes.

Q. How do those shipments compare with the totals of last year, the season of 1901 and '2?

332 A. I can't say as to that. I think the Santa Fe were a large number of cars ahead of the Southern Pacific.

Mr. HERRIN: We can get the figures in the morning.

Mr. CALL: Yes. I didn't know but Mr. Chambers had the totals. It is only for convenience at this time, Mr. Chambers being on the stand.

Mr. HERRIN: I don't make any objection. It is just a suggestion.

By Mr. CALL:

Q. Do you recollect, Mr. Chambers, how it was in the season of 1900 and 1901?

A. No, I do not.

Q. Your impression is that the shipments have been pretty near the same in former years?

A. My impression is the shipments over the Santa Fe are more than over the Southern Pacific.

Q. Every year?

A. For the three years.

Q. Now, isn't it a fact that the Santa Fe and Southern Pacific endeavor to work a division of the business over the two roads, so as to make it about equal?

A. Well, there is no—the Santa Fe policy is to take 50 per cent. of the business; that is, the proportion of the business that the officers that dictate the policy of the road say; that is the instructions to myself as general freight agent, to see that we take 50 per cent. of the citrus fruit business and all of our car supply, our basis for car supply and for ice and all the arrangements we have to make in advance of the crop, are made on that basis.

Q. That is the number of refrigerator cars and tons of ice?

333 A. And the additional cars we may need over what was in use the previous season. Of course that estimate had to be given along in July, July or August, in case it is necessary to build new refrigerator cars, new ice houses, and get additional ice machines.

Q. What is the reason it sometimes happens when people want to ship over the Santa Fe and the Santa Fe route is preferred, that they run out of Santa Fe cars, and that that time they have to take cars of the Southern Pacific?

A. We supply the cars as far as we can, the cars in the service that are ordered and that are in the service are moved regularly, with as much regularity as we can move them, and when they are in California ready for loading, we supply them when they are ordered. We supply Santa Fe cars. When it gets to the place where we cannot supply all that are ordered or asked for by the shippers, we discriminate. We deliver the shipper when the supply of Santa Fe cars is exhausted—we tell him that if he cannot wait until we get cars, in the territory to supply him that we will order for him Southern Pacific cars, but I want to say that there are no Southern Pacific cars forced upon any shipper at all. They voluntarily take them and load them after they have been told they cannot get Santa Fe cars.

Q. If you do furnish them Southern Pacific cars, you ship over the Southern Pacific?

A. Yes, because those cars cannot run over the Santa Fe lines. There is no arrangement for them to run over our lines. All shippers understand how they move.

By Mr. CALL:

334 Q. Mr. J. C. Stubbs testified in Chicago at the hearing there before the Interstate Commerce Commission in January, 1902, that there was an arrangement between the Southern Pacific and the Santa Fe for an equal division of the business of citrus fruit. You understand that that is consummated by the division of equipment largely, do you?

A. Well, the equipment very nearly divides the business, I will say that; but there is no arrangement that I know of for any division. There is no arrangement in the division of the earnings and no arrangement for any division of the tonnage,

Q. When he said there was such an arrangement, that does not meet your view?

A. The arrangement is just as I stated exactly; that is just the arrangement.

Mr. HERRIN: Mr. Stubbs didn't say it was an arrangement.

Mr. CALL: He said it amounted to an arrangement.

Mr. HERRIN: I don't think so.

Mr. CALL: I desire to offer in evidence the testimony taken in the case of the investigation of the Northern Securities Company, what was known as the Community of Interest case.

Mr. HERRIN: I thought you were referring to something else.

Mr. CALL: I would like to have the testimony in that case a part of the record in this case. The original testimony in that case is before the commissioner; that is, it is filed with the Interstate Com-

merce Commission, but I would like to have it offered formally as a part of the record in this case.

Mr. MADISON: I would like to object to it. I don't know that it affects us in any way, but it seems to me to be entirely in-
335 competent.

Mr. BURKS: I would like, also, to add my objection to that, your honor. It is something that is not submitted at this time and it is absolutely impossible to tell what bearing it might have, or what facts in that testimony might have a bearing on this case.

The COMMISSIONER: Do you desire to use that in connection with the examination of Mr. Chambers?

Mr. CALL: I do.

The COMMISSIONER: Then you had better produce the testimony, I remember that there was some testimony of that kind, but I don't remember just what it was.

Mr. CALL: I have it at my office.

Mr. BURKS: We would like to examine it before the presentation of the testimony.

The COMMISSIONER: Mr. Stubbs was examined in Chicago with reference to a consolidation of the Union Pacific and Southern Pacific, and in that connection he was asked about the arrangement between the Southern Pacific and the Santa Fe, respecting this orange traffic and said something. I don't remember just exactly what it was.

Mr. CALL: I don't undertake to quote the testimony exactly, but the substance of it was that there was what amounted to an arrangement between the Southern Pacific and Santa Fe for an equal division of the citrus fruit business from southern California.

Mr. BURKS: I would suggest that the way to reach that question is to read the part of the statement referred to and to ask whether or not it was true.

336 Mr. HERRIN: It don't seem to be pertinent to any examination of Mr. Chambers.

The COMMISSIONER: Mr. Chambers said he don't know anything about any arrangement of that kind.

Mr. HERRIN: That would be the end of it, as far as he is concerned. If you want to examine Mr. Stubbs or get a deposition of his——

Mr. CALL: I will introduce the record tomorrow. I didn't know you would insist on anything being done formally.

Mr. HERRIN: I don't know what you are referring to. It may be that I would prefer to have Mr. Stubbs called as a witness and cover the subject. We will take it up again.

Mr. BURKS: It is certainly very evident that the representative of the Santa Fe should not be bound by any admission on the part of an officer of the Southern Pacific.

The COMMISSIONER: Oh, certainly.

A. I simply do as I am told.

By Mr. CALL:

Q. Then, Mr. Chambers, do you attempt to equalize the business in any other way than by a division of this freight equipment?

A. The freight equipment about, as I said before—the car supply about divides the business just in the proportion I have stated.

Q. Suppose it should happen that the Santa Fe would haul a good deal more than the Southern Pacific, considerably more, say get six hundred or a thousand cars ahead of the Southern Pacific at about this time of year, what would you do in that case?

337 A. The shipments are heavy over the Santa Fe. The shipments out of California in March, April and May run from 50 cars to 200 cars a day. The shipments are very heavy over the Santa Fe for a week or ten days at a time and then they will run the Santa Fe out of cars. Then shippers must go to the Southern Pacific. It is the same way with the Southern Pacific. If you take out 150 cars a day, it would be impossible for the Santa Fe to supply the cars.

The COMMISSIONER: You have not answered the question Mr. Call asked you, which was whether you took any other steps to equalize this division except so far as equipment is concerned.

A. That is all. Just explaining how it would work out.

Mr. CALL: I would like to excuse Mr. Chambers until I can examine those other schedules. I would like to see them.

The COMMISSIONER: I think we will take a recess until ten o'clock tomorrow morning.

EDWARD CHAMBERS, a witness recalled by the plaintiff, testified as follows:

Direct examination (resumed).

By Mr. CALL:

Q. Where does the Santa Fe Railroad system get its fruit cars which it operates upon its system?

A. It owns most of its refrigerator cars.

Q. Several witnesses have spoken of the Santa Fe Dispatch cars. What is the name of that car?

A. The Santa Fe Refrigerator and Dispatch.

Q. Is that a system of cars owned by a company independent of the Santa Fe?

338 A. It is a separate incorporation, but I think it is entirely controlled—in fact I know it is, by the Santa Fe Company—the stock is.

Q. What arrangements has the Santa Fe railroad for operating those cars?

A. Well, they operate them just the same as their own cars—no special arrangement.

Q. What does the Santa Fe pay for the use of those cars?

A. They are operated on the line just the same as the other cars that are used for other traffic.

Q. They are not voluntarily and freely furnished by the Dispatch Company to the Santa Fe Company, are they?

A. Oh yes, the Santa Fe officials control the refrigerator car line. They direct the movement of the cars, the regular officers of the railway company.

Q. You mean to say then that neither the Santa Fe Railroad Company pay the Santa Fe Dispatch Company nor the car line pays the Santa Fe for the use of those cars?

A. There may be some system of accounting in there, but they are practically the property of the Santa Fe railway entirely.

Q. You cannot say, then, what is paid for the use of those cars?

A. I could not.

Q. You don't know which one pays the other?

A. I couldn't say, and it is merely a matter of accounting, whatever is charged up to the credit of the cars for their use.

339 Q. I have heard it said that the Santa Fe railroad pays a certain amount—I think it is a ton—per mile—no, it is a mile per car—so much for each mile for each car for the distance it travels over the road. Do you know anything about that?

A. Well, they may do that for the purpose of showing just what the cars would earn or comparing the amount of those cars with the private car lines, but whatever that is it is merely a matter of bookkeeping. If any earnings are shown on the cars, it is credited to the railroad company.

Q. It is a corporation independent of the Santa Fe Railway Company, you say?

A. Yes sir.

Q. And having a different system of stockholders?

A. No sir.

Q. The same stockholders?

A. The same stockholders, yes sir. The Santa Fe railway control the stock of the Santa Fe Refrigerator Dispatch.

Q. You mean a majority of the stock of the Dispatch Company is owned by the Santa Fe?

A. I mean all of it. I presume it is necessary to incorporate a company to take in some cars that the Santa Fe previous to that time perhaps had a part interest in. It was some such purpose as that, but practically they are operated as Santa Fe cars the same as the other equipment.

Q. What was the necessity of incorporating another company?

A. I couldn't say as to that. Some legal requirements.

Q. Who, among your company, know the exact methods of business connections between those two companies?

340 A. I presume the president.

Q. Mr. Ripley?

A. Mr. Ripley.

Q. Can you state how many refrigerator cars there are, owned by

the Santa Fe Railroad Company or the dispatch company, in operation now?

A. Well, there are 3500 cars that are in operation in the citrus fruit traffic, about 700 cars that are not suitable for citrus fruit business—five to seven hundred cars—cars that have been previously operated, but now are too small and condemned for various reasons.

Q. You mean there are 3500 fruit cars that are now in operation on the Santa Fe system?

A. Yes, controlled by the Santa Fe Railroad Company in the citrus fruit traffic at the present time.

Q. How many cars were there so owned by the Santa Fe last year from November, 1901, to November, 1902; that is fruit cars, I am speaking of, citrus fruit cars?

A. I don't remember just exactly. I think there were 1660 cars that were owned by the Santa Fe Railway Company last year. Since that they have built some new cars.

By Mr. MADISON:

Q. Does that 3500 you speak of exclude or include the 500 cars you spoke of as being condemned?

A. It excludes them. About 4200 cars altogether.

By Mr. CALL:

Q. How many citrus fruit cars were there operated by the Santa Fe for the territory, in the year ending 1901?

A. I think the same number as in the year 1901 and 1902.

Q. How many were there for the former year, 1901?

341 A. I couldn't say as to that.

The COMMISSIONER: Do you understand he refers now to the cars run by the Santa Fe or the entire number of fruit cars operated by the Santa Fe?

Mr. CALL: The number of fruit cars operated by the Santa Fe for that year.

The WITNESS: I am speaking of the number owned by the Santa Fe.

Mr. CALL. Well, we had better make that exact. I was referring to the number of fruit cars that were operated by the Santa Fe Railroad Company during the present year. I understood you to say 3500.

A. That is the number owned by the Santa Fe railway?

Q. And operated by them on its system?

A. Yes, but there are more cars than that in the citrus fruit service.

Q. There are some 700 old cars?

A. No, there is five to six. I think there are 4100 cars in the citrus fruit traffic this year. That number of cars were arranged for.

By the COMMISSIONER:

Q. The Santa Fe, as I understand, owns 3500 cars which it owns: and in addition to that is arranged for a certain number of other cars which it gets into its fruit service, making 4100; and last year they owned 1600, but they arranged for a good many other cars.

Mr. CALL: Those 1660 cars were owned by the Santa Fe system?

A. Yes sir.

Q. How many other cars were there that the Santa Fe op-
342 erated that year?

A. I think about 1500 cars. I think about 3500 cars in the service; that is, there were that many arranged for.

Q. What cars were those that were arranged for? What companies did they belong to?

A. Why the principal supply was from the Armour Company, the C. F. X., and the F. G. E.

Q. And the year ending 1901 there were about the same number of cars owned by the Santa Fe, 1660.

A. Just about the same.

Q. How many other cars besides their own did they provide for to operate?

A. In 1900 and 1901?

Q. Yes sir, in 1900 and 1901.

A. I think the maximum number of cars in the service that year was 5700 cars.—5500 cars—no, not 55, 4500 cars. They were principally furnished by the Armour car line, F. G. E., and C. F. X., in addition to what the Santa Fe controlled themselves.

Q. During the present year the Santa Fe made no arrangements for Armour cars?

A. The contract expired at the close of last season.

Q. How long had that contract been in force with the Armour Company?

A. Five years, I think.

Q. For five years the Armour Company had furnished citrus fruit cars for use on the Santa Fe lines?

A. A certain number.

Q. And that contract expired in December?

343 A. In November. We had an absolute contract for a certain number of cars. I think it was 750 cars, 1250 altogether, and then the right to call for additionel cars if we required them, if we did not care to furnish them ourselves,—if the Santa Fe didn't care to furnish them.

—. Then you for the year ending November, 1902, you called for 1500 cars from them. Am I right about that?

A. Just about.

Q. And for the year ending 1901, November, 1901, you had that year, about 1660 cars of your own, and you called on them to furnish some 2900 cars.

A. Yes sir. There was a large crop that year. There was a great

many additional cars, additional to the contract cars kept in the service for a couple of months. I think until March and April.

Q. How long does it take for a citrus fruit car to make the round trip on an average, California points to the East and return?

A. I think last year the average was 65 days for the Santa Fe.

By Mr. HERRIN:

Q. For the whole season?

A. Not the whole season. That is to make a round trip. That is, starting from the time they loaded in California and came back to California.

Q. But your average is for the season.

A. Well, it is for the shipping season; not for the year; not for the entire year. The average would not be so——

By Mr. CALL:

Q. You are speaking of the orange season, the average time during the orange season?

344 A. I mean the season the car is in use moving either westbound or eastbound, but a large part of the season the cars are not in the traffic at all. They are standing idle or on other tracks. There is not in the——

By Mr. MADISON:

Q. That is the average to all points in the East?

A. That is the average to all points in the East.

By Mr. CALL:

Q. The heavy shipments of oranges for a great many years—the heaviest shipments are during November, December, January, February and March and April, four months. Then during those months, the largest shipments of citrus fruits occur so a car would only make about two trips at the best.

A. That is all; 65 days.

Q. What would be the total number of cars shipped last year, citrus fruit cars?

A. You mean the total shipped, out of California?

Q. Yes, the total shipped out of California.

A. Out of southern California?

Q. Well, out of southern California.

A. Something over 15,000 carloads. I cannot tell just exactly now.

Q. How many were shipped the prior years?

A. The year before?

Q. Yes, sir.

A. About 23,000 carloads, as I remember.

Q. That is for the year ending 1901?

A. Yes.

345 Q. Your recollection seems to be very good without referring to any records. Can you state how many cars were shipped for the former year, for the year ending November, 1900?
A. I think it was 9,000 cars.
Q. You mean *1889* and 1900?
A. Yes sir.

By the COMMISSIONER:

Q. You mean the total shipments, or your shipments?
A. The total shipments.
Q. 9000?
A. I think that is it. I think I have got the exact figures.

By Mr. CALL:

Q. Have you got any record to show the total number of citrus fruit cars shipped from southern California for the year ending 1899?
A. I think I have in my office.
Q. It appears that for the year from November, 1901, to November 1902, that there were 15,000 carloads of oranges and citrus fruit shipped from southern California, south of the Tehachapi.
A. For the season?
Q. For last season.
A. Something over 15,000 carloads.
Q. For last season?
A. Yes sir.
Q. Then the Santa Fe system appears to have shipped 7,731 cars of that. That was just about half of the total shipments for that year?
A. I stated yesterday just what the Santa Fe handled.
346 Q. And it appears from those figures for each year that the result of the division of the equipment has resulted in the equal division of the number of cars that have gone out?
A. Not exactly.
Q. But very closely to that?
A. There is considerable difference some years—700 carloads as I remember. I may not have the figures just exactly right for that.
Q. Will you obtain and furnish us with the exact number of cars?
A. I don't know as I can do that. It is just as we pick up the data.
Q. You haven't any record showing that?
A. That is my best recollection of it, the best that I have got.
Q. It appears from the testimony of numerous orange shippers that during the latter part of the orange season that they have usually and frequently been furnished in shipping over the Santa Fe railroad with Armour cars?
A. This year?
Q. Some of the witnesses testified this year.
A. I will state that there are a few in the service this year, cars

that have come out loaded with perishable freight, requiring a refrigerator car, that we were obliged to receive at the junctions east. Those cars would be suitable for citrus fruit loading and we load them back. Then there were a few cars left over from last season that we loaded this year,—that were in California. Those were cars that we contracted for last year and brought them out for traffic and didn't load back. So they were held over and loaded back this year.

347 The contract expiring, it is understood that no Armour cars are handled over our lines in the citrus fruit traffic.

Q. Therefore, when there is a shortage of Santa Fe cars, you simply call upon the Southern Pacific to furnish other cars, do you, to supply that trade?

A. We advise the shippers we cannot supply Santa Fe cars and ask them if we shall order Southern Pacific cars for them. They usually want the Southern Pacific cars, in preference to having to wait for the Santa Fe cars.

Q. And you ship them out over the Southern Pacific road, then?

A. Over the Southern Pacific road, yes sir.

Q. Well, isn't it customary for railroads to interchange their cars one with another on freight generally?

A. It is the ordinary cars, but not the refrigerator cars.

Q. That is an exception to the custom of interchanging cars?

A. The reason for that is, the refrigerator is a special car and no railroad wants to handle it unless they require the car for their own traffic. It is heavy and cannot be loaded with a certain kind of freight without damaging the material.

Q. For that reason the Santa Fe never exchanges refrigerators with other companies?

A. Well, they don't allow other companies' cars to operate indiscriminately on their lines. Take a refrigerator car loaded with fruit that requires a refrigerator car, originating at a point beyond the Santa Fe lines, but they will allow other lines to put their

348 cars on the Santa Fe road and use them on the Santa Fe lines without special arrangement.

Q. So if the Armour people present their refrigerator cars to ship over the Santa Fe road, you would not take them?

A. No sir.

Q. And, I suppose, that is the same rule that the Southern Pacific would not take your cars?

A. They would not take our cars now.

Q. Well now, during the latter part of the orange season, when it appears that the Santa Fe has hauled a good many more cars than the Southern Pacific system, as all the witnesses say they prefer to ship over the Santa Fe lines, it would follow from that that the Santa Fe would do most of the business if they furnished the cars. Isn't it customary to figure up pretty carefully to find out just how many cars have gone out so as to equalize that traffic with the Southern Pacific?

A. We usually know how many cars have gone out, but the Santa Fe cars are placed for loading when we have them.

Q. Do you ever receive any instructions from head-quarters, from Mr. Morton, the president of the company concerning a division of such business?

A. Well, the instructions I have received is a fair share of the citrus fruit traffic for the Santa Fe lines—fifty per cent., one half of the business.

By Mr. HERRIN:

Q. They expect you to get that?

A. They expect me to get that, yes sir. We base all our calculations for equipment on that, and the equipment—just as the division is, the equipment really does it. In the latter part of the season the Santa Fe always handles, I think, as a general rule, the most of the business.

349 Q. In order to get that fifty per cent. of the business, you don't have to divert Santa Fe fruit cars onto the Southern Pacific.

A. No sir.

Q. Nor the Southern Pacific don't have to divert onto its lines or off of its lines any particular cars?

A. No sir.

Q. That division of the equipment works that result without any special effort?

A. It approximates that result. It don't work it out exactly. In the heavy shipping season it is a question of cars always for the three months, for March, April and May, and sometimes February. Beginning May or June until the season closes, of course the shipments are not so heavy on the Santa Fe, because we are better supplied with cars and we have more cars on hand, and the Santa Fe handles the greater proportion of the traffic during the latter months in the year, principally on account of the lemon business. There is more lemon business moved in the summer than in the entire winter months, and more of the lemons are located along the lines of the Santa Fe road in southern California.

Q. Who of the officers of your company determines the amount of equipment for citrus fruits to be prepared and arranged for, for each year?

A. Well, I furnish the estimate. I do more of that, perhaps, than any other officer of the company.

Q. You estimate the number of cars needed?

A. I estimate the crop and the number of cars needed.

Q. Then how do you know—how do you arrange with
350 the Southern Pacific, so that they will get an equal number.

A. There is nothing of that kind. They look out for themselves in that respect. We usually confer as to the crop, as to how much

will be produced. I go to them and find out what their estimates are through their agents, and they come to me.

Q. What is the basis?

A. So far as supplying the cars, they get their own cars. We don't know what their arrangements are or how many cars they get. We get cars enough to handle our business.

Q. You estimate that the cars you provide for will handle one-half of the crop?

A. That is the basis, yes sir.

Q. Now, the testimony here shows that naturally that the traffic would move by the Santa Fe or the bulk of it. Don't you think the Santa Fe is losing a good deal of trade by not getting that part of the business that would go that way if they could get the cars?

A. I don't think so.

Q. You heard all of those witnesses testify here yesterday and day before that they prefer to ship by Santa Fe even where they had Santa Fe and Southern Pacific tracks both up to their packing houses?

A. Yes, some of them do. There are a great many others prefer to ship Southern Pacific.

Q. None of these witnesses have testified to that you noticed?

Mr. HERRIN: You have not called the Southern Pacific witnesses yet. I can furnish you with a list if you want them.

351 By Mr. CALL:

Q. Don't you think that it is a fact that the Santa Fe road would do the bulk of the business or considerably more than half of it if the movement of the traffic was not affected by the cars?

A. I think this: Considering the two routes of the Southern Pacific one via Ogden and one via El Paso, and taking everything into consideration, the Santa Fe will make more money by not attempting to take more than fifty per cent. of the business. The citrus fruit territory is about equally divided between the two lines. There is as much citrus fruit—there are not so many lemons as oranges—but taking the two together, it is possible to load as much on the Southern Pacific tracks as it is on the Santa Fe tracks, so that I think the policy of not seeking to take more than fifty per cent. is the best one for the Santa Fe's interest and I so recommended myself.

Q. Do you mean to say that you never meet with the Southern Pacific officers or agents in order to determine how much the company will arrange for as to equipment?

A. No sir.

Q. And you make that determination yourself based solely on the traffic?

A. Yes sir. The conditions over their line may be different from ours.

Q. And you never have received any instructions to confer with the Southern Pacific people concerning those matters?

A. No sir.

Q. Do you not, as a matter of practice and custom, confer with them as to how much and how many refrigerator cars each company shall have?

352 A. No sir. As I stated, our car supply is arranged altogether independent of the Southern Pacific. We don't know where they are going to get their cars or how many they are going to put in the service. We haven't any interest in what they arrange for. We arrange for what we need.

Q. Do you know of any contract or any agreement or arrangement other than what you have testified to, for the division of the traffic or earnings?

A. No sir.

Q. Between the two companies?

A. No sir.

Q. What is the capacity of the present engines of the Santa Fe railroad as to the hauling capacity of freight? How does it average as compared with former years?

A. Well, you mean to haul the average trains per engine?

Q. Yes sir, the average train per engine, the capacity of the engines.

Mr. HERRIN: On what line?

Mr. CALL: On the Santa Fe lines; I am speaking of the Santa Fe lines.

By Mr. HERRIN:

Q. Over what division?

Mr. CALL: I want to know whether the engines are heavier than they formerly were.

A. I don't know about that. I can tell you what the trains are now. I don't know that I can give you the comparisons between two years ago and the present. I don't remember.

Q. How is it now?

A. In the perishable fruit the schedule at the present time I—I think the average is 1050 gross tons to the engine. That

353 doesn't mean including over the mountains. That is what they consider a train on the average grades.

By the COMMISSIONER:

Q. That wouldn't mean much of anything. Do you mean that is the average between here and Kansas City or between here and Trinidad?

A. I mean over the system except the mountains. Of course the trains have got to be divided up to go over the Raton mountains and the Glorietta mountains, and the Cajon pass at San Bernardino.

Q. Your engines haul more than 1000 gross tons from Trinidad down to Kansas City?

A. La Junta to Kansas City they may, but that is almost level there. From Trinidad to La Junta is up grade.

Q. They would probably haul 2500 tons from La Junta down to Kansas City, wouldn't they?

A. I couldn't say as to that.

By Mr. BURKS:

Q. You don't mean gross tons, do you, Mr. Chambers?

The COMMISSIONER: Yes, the weight of the train proper, the weights of the engine and cars and everything.

A. Yes, I mean gross tons. I mean the weight of the cars and the train and the load.

By Mr. CALL:

Q. There is on file in the office of the Interstate Commerce Commission the annual reports of the different railroads under the interstate commerce act, and I would like to have it understood, if there is no objection, that the annual reports of the Southern Pacific as well as of the Central Pacific railroad and of the Santa Fe Railroad Company, of the Southern California Railway Company, and
354 any other companies which belong to the Santa Fe system, which have been filed under the law showing the operating expenses and the gross earnings and the net earnings from 1890 down to the last annual report shall be considered as in evidence in this case, and I would like to inquire if there is any objection. Otherwise I will ask that you produce the reports. I want to show that. I would like to have that as a part of the record in the case, in order to show what relation the gross earnings have, and the net earnings upon the reasonableness of the rates.

Mr. HERRIN: I understand it is the practice of the commission to allow reference to be made to that. It is a public record.

Mr. CALL: It is a public record, but I thought it would be well to call your attention to it.

Mr. HERRIN: It might be well to know what you want to claim.

Mr. CALL: I refer to it, because in recent years there has been a large increase in the gross earnings and a still larger increase in the net earnings of not only the Santa Fe but the Southern Pacific, and there appears to be a smaller expense, per ton per mile for the movement of freight than in former years, and I call attention to that as going to the question of the reasonableness of the rate.

The COMMISSIONER: Let me ask a question. The Southern Pacific is the operating company of all these different railroads, through to New Orleans and also the Central Pacific.

Mr. HERRIN: They are separate in Texas.

The COMMISSIONER: Do you have to keep a separate report of the Texas lines?

Mr. HERRIN: Yes, the Southern Pacific does not operate
355 those lines. They are operated by the companies that own them. That is required by the laws of Texas, but the South-

ern Pacific operates all the lines outside. The Southern Pacific I think, owns the stock of the Texas companies.

The COMMISSIONER: How is it with your company. Do you make a separate report on each end of the line?

Mr. BURKS: I believe the last report was made of the coast line of the Santa Fe system.

The COMMISSIONER: You mean to the Interstate Commerce Commission?

Mr. BURKS: Yes.

The WITNESS: I don't know how it is made.

The COMMISSIONER: What is the name of the corporation?

Mr. BURKS: The Atchison, Topeka and Santa Fe Railroad Company operates as far as Barstow coming into California. The Southern California Railway Company extends from San Diego to Barstow.

The COMMISSIONER: That is a separate company, is it?

Mr. BURKS: Yes sir.

The COMMISSIONER: Makes separate reports?

Mr. BURKS: Yes sir.

Mr. CALL: Of course you are familiar with the general scope of those annual reports to the Interstate Commerce Commission?

A. I can't say that I am. They don't come under my observation.

Q. You are aware that there has been a large increase in the gross earnings and in the net earnings of the Santa Fe system?

A. There is a very large increase.

356 Mr. HERRIN: There is more increase in the gross than the net.

A. I don't know, I have not examined it very carefully.

Mr. CALL: I was going to ask if you thought the question of the increase in the size of engines and increase in the size of cars has anything to do with that or whether it comes from something else. What is the cause of the increase in the net earnings?

A. Well, I couldn't say as to that. I suppose if the gross earnings increase, the net earnings increase. I know there has been a large increase in the business, but I don't think the large engines have had much to do with it. We have had more trouble with the large engines than we have with the smaller ones.

Q. You think the increase of gross earnings and net earnings is due to the increase of business?

A. Yes, sir.

Q. And not to any change of method of operation?

A. No sir. I don't think there has been any change in the method of operation. I wanted to explain about the trains. That estimate I gave you, or figures I gave you, was for expedited service. The usual train, under the ordinary freight schedule, is 1350 tons.

The COMMISSIONER: Is that the average train over the whole Santa Fe system?

A. I think so. That is the basis the operating people give us

when we are figuring on shortening the time for the ordinary freight, when we are discussing the schedule for perishable freight.

By Mr. CALL:

357 Q. Do you know of any rebates that have been paid by the Santa Fe or the connecting lines of the Santa Fe in the East made to orange shippers or growers or packers during the present year?

A. I do not.

Q. Do you know of any such rebates during the past year?

A. No sir.

Q. How long since you have known of any rebates having been paid?

A. About three or four years.

Q. You have known of no rebates having been paid in three years by either the Santa Fe or by any other road arising out of the citrus fruit business? Is that so?

A. No sir. I believe in the past three years the rates have been absolutely maintained.

By Mr. HERRIN:

Q. What date? Can't you fix any dates?

A. Since the railroads took the routing of the citrus fruit into their own hands. I think it was January 1st, 1900.

Mr. HERRIN: 1900 is right.

By Mr. CALL:

Q. At that time the company put into effect the routing agreement as to reserving to the initial carriers the right to route the traffic?

A. Yes sir.

Q. Now, that regulation or rule of the initial carriers is a regulation made upon the joint tariff, I believe, filed by the Southern Pacific and Santa Fe and other railroads with the Interstate Commerce Commission?

A. Yes sir.

358 Q. And it applies to all freight not only citrus fruit but other freight as well?

A. I think it does.

Q. It is so stated on the joint tariff.

A. It is a separate tariff for citrus fruits. I know it is on the citrus fruit tariff, and I believe it is on the other east-bound tariff, too.

Q. Do you enforce that regulation as to any other tariff than citrus fruit?

A. Not generally, no sir.

Q. You do not enforce it?

A. Not generally, no.

Q. Do you enforce it sometimes.

A. Sometimes we do, yes sir.

Q. Under what circumstances do you enforce it as to other traffic?

A. Well, when there is a question about divisions or something of that kind, where the shipper wants to route over a certain line east of Chicago, with which we have no arrangements, or, there may be some dispute as to the divisions of a through rate, then we take the routing over the lines with which we have divisions.

Q. The testimony as you have noticed, taken on this hearing, shows that there has been a good deal more time consumed in transit by citrus fruits during the present year than former years. How do you account for that?

A. Well, the heavy traffic; all kinds of traffic. The service is about the same this year as last year over the Santa Fe lines.

Q. But the amount of citrus fruit moved was not nearly
359 so much last year as it was the year before?

A. No sir. Year before, the fore part of the season, the service was rather slow for various causes. The main cause on the Santa Fe lines was a strike of the coal miners at Gallup during the early part of the year, the first two months. The latter part of the season the time was good.

Q. Don't you think that the delay and time consumed in transit was largely occasioned by the lack of competition between the two roads and the fact that each one would get half the business anyhow?

A. No sir; I don't think that had anything to do with it. Our printed schedule is just the same today as it was five or six years ago. It has not been changed.

Q. Have a good many claims for damages been made by shippers?

A. Some.

Q. Arising out of delay in transit?

A. Yes sir.

Q. And any claims for over packing on account of the minimum or anything like that?

A. No sir.

Q. What other claims for damages have been made on account of citrus fruit besides delays in transit?

A. The delays are principally—once in a while we would get a claim for lack of proper ventilation or refrigeration. Sometimes the claims were just and other times they were not.

Q. How much did you pay in the way of such claims during the season ending last November?

360 A. We paid very little, a very small amount last year. I couldn't say just what it is; three or four thousand dollars.

Q. I would be glad if you would furnish me the amount.

A. It is no considerable item; probably, I would say, five thousand dollars is the outside figure; that is, I mean for our line and our connections on business going east over the Santa Fe line.

Q. How much did you pay the year before?

A. The year before, possibly we paid about sixty thousand dollars—the season before.

Q. The season before, that is the season ending 1901?

A. Yes sir.

Q. How much did you pay for the season ending 1900?

A. I couldn't say; probably the same as last year. I don't think it would go more than that.

Q. For former years, prior to that, say 1899?

A. The proportion would be just about the same.

Q. You think you didn't pay over five or six thousand dollars?

A. Probably not that much. The shipments were not so large.

Q. Have you any way of showing what you paid?

A. I don't know that we have. They are in separate vouchers. The records would all have to be gone over.

Q. The largest sums you paid were for the season of 1902?

A. The largest sums that we paid was for the season of 1900 and 1901. That was on account of the delay caused by the coal miners' strike.

361 Q. Who were those claims paid to?

A. Paid to the shippers.

Q. At Los Angeles those claims were paid to whom?

A. Oh, I think most every shipper over the Santa Fe lines.

Q. Have you any records showing what was paid the California Fruit Exchange?

A. Yes sir.

Q. I wish you would produce that.

A. I can tell you.

Q. How much was it?

A. $21,000.00.

Q. Which was paid for the year ending 1901?

A. Yes sir. They were the largest shippers over our line during that time. All the other shippers that had shipments delayed were paid in the same proportion all together.

Q. Can you state what was the gross amount received by the Santa Fe system for the citrus fruit year ending November, 1902, for the citrus fruit business?

A. Somewhere about two million and a half dollars, I think, as I remember.

Q. I mean the gross amount of freight. I was referring to the gross amount of freight received by the Santa Fe system for citrus fruit during the year ending November, 1902.

A. That is not the big year. The big year ended 1901.

The COMMISSIONER: Is that the amount obtained by the Snata Fe?

A. Retained by the Santa Fe.

Mr. CALL: I would like to have those figures given accu-

362 rately, Mr. Chambers, if you can furnish them.

A. I don't know that I can furnish them accurately, but we have figured last year, I think, but the year before, on an average

rate received from the citrus fruit traffic, showing about $1.05. That is the way we calculated it.

Q. You would have that record for the fiscal year ending June 30th, 1902?

A. Well, only approximately. It would be very close to the actual figures. If you will take the number of carloads out, it would be approximately very close.

Q. What was the amount received during the former year ending November, 1901?

A. I don't know that we have any average on that, but I presume the average would be just about the same as the season ending 1902. It would be about $1.05 a hundred; approximately $270.00 a car for a minimum carload.

Q. There was more fruit shipped that year; it was a bigger year.

A. Yes.

Q. Well, it would be a larger amount. You would base your calculation upon the number of cars then?

A. Yes sir.

Q. And you have no record showing the actual money received?

A. No, we haven't, but that is very close to it.

Mr. CALL: I think that is all.

363 Cross-examination.

By Mr. HERRIN:

Q. In a general way, what has caused the slow time you are making the present season on this citrus fruit business?

A. The heavy traffic of all kinds on the system, both local and through, and we had some conditions in New Mexico between Albuquerque and La Junta where the water supply ran out and got bad, and the engines would not give the service they did in previous years. It was source of a good deal of trouble, the one division.

Q. Were you limited by the lack of motive power to move the traffic offered?

A. Yes, generally.

Q. Was that true of all sorts of freight?

A. Yes sir. I will say we gave preference to the citrus fruit traffic over all kinds of traffic. The other traffic was very much more delayed than the citrus fruit traffic.

Q. You gave a special rapid service for the citrus fruit, being perishable fruit?

A. Yes sir.

Q. Well, is there anything permanent to these conditions?

A. No sir; it is getting better with us right along.

Q. Do you expect next season to resume your normal time?

364 A. Yes sir; we expect during this season to do so.

Q. What would you call the time that ought to be made via your line from Los Angeles to Chicago?

A. Our printed schedule from San Bernardino—that is where the fruit is mostly collected—to Chicago, is about seven days and a half.

Q. It is then eight days?

A. Yes sir.

Q. You don't expect the traffic to become less in volume, do you, soon?

A. No sir. Well, the westbound traffic is letting up some. That would relieve and help out the movement east bound. We are getting more engines and getting a better water supply at points where the trouble was.

Q. Those are the special things that you are improving this year?

A. Yes sir. Most of our delay with the citurs fruit this season has been on that division between Albuquerque and La Junta. The balance of the system we made close to schedule time.

Q. In a general way, so that it may go on the record, will you state the service given to the citrus fruit traffic, first, as to the weight of the cars used—take the forty-foot cars.

A. The refrigerator cars in the citrus fruit traffic in use on the Santa Fe weigh from thirty-four to thirty-seven thousand pounds; that is, without ice, and when iced, there is nine thousand

365 pounds added to that.

Q. How much freight do you get in them?

A. They are usually loaded at the minimum of 26,000 pounds.

Q. Well, generally then, you say that the dead weight is much greater in this traffic than in ordinary traffic.

A. Yes sir; very much greater.

Q. The ordinary traffic moving in the ordinary freight car is of a very much lighter character?

A. Very much.

Q. Many of those carry loads of more than 26,000 pounds.

A. Yes, the ordinary box car carries from forty to eighty thousand pounds capacity. Refrigerator from forty to sixty thousand pounds.

Q. Now, ordinary freight cars may be loaded and are loaded either way, either west or east bound?

A. Loaded both ways usually.

Q. How is it with this equipment, the ventilator and refrigerator cars? What proportion of loads, if any, are brought westbound?

A. I have not got the figures for this season so far, but last season the Santa Fe hauled 41 per cent. of the equipment empty westbound, and the season before 59 per cent.—the heavy season, the season of 1900 and 1901.

Q. In considering the reasonableness of the rate, you must

366 take into consideration the service that must be rendered both when the cars are loaded and when they are empty, in moving them?

A. Yes sir.

Q. Are there any other considerations bearing upon the rate and the reasonableness of the service that you wish to mention?

A. Well, the repairs to the cars—repairs to the refrigerator car cost almost double as much as the ordinary box car. The value of the car—the ordinary box car, the value is about $700.00. The refrigerator car, I think, is about $1000.00 to $1100.00. I think $1100.00 at present.

Q. There are times in the year when your refrigerator cars are not in use, are there?

A. I think on the average our cars of last year were in use in the citrus fruit traffic that the Sante Fe controlled, six months.

Q. Of the year?

A. Of the year.

Q. When you were not using them in the fruit traffic, did you load them out to other places or use them elsewhere, or did they lay idle?

A. They are used in the ordinary traffic if we are short of box cars.

Q. But they are not a suitable car?

A. The operating department don't want to use them unless they are compelled to supply cars for loads because it is more costly to operate them and there is only a limited amount of freight can be loaded in them. You cannot load all kinds of freight in
367 them. You have got to load freight that will not damage the interior, take the shellac off and then damage the interior.

Q. The use for other freight is limited?

A. Yes sir. We load westbound all the refrigerator cars we can, all the freight we can secure to load in refrigerators.

Q. But you cannot load everything in them?

A. No sir.

Q. And you must bring 41 per cent. back empty, or that seems to have been the proposition last year, and they cannot be used all the time, and those items make up the expense attributable to this particular traffic?

A. Yes.

Q. Now Mr. Call asked you about how these rates were made and how it happened that the Sante Fe and the Southern Pacific put in the same rates from California to eastern points. Suppose either one of these roads would put in a less rate on citrus fruit than any other commodity, what must the other line do in order to hold the traffic?

A. Must meet the rate or else go out of the business.

Q. If the Sante Fe were to make a rate of $1.20 per hundred pounds on citrus fruit, wouldn't that at once bring traffic to your line or tend to do it if the Southern Pacific attempted to continue its rate of $1.25?

A. It certainly would.

368 The COMMISSIONER: How could it if you supplied all the cars you had?

Mr. HERRIN: If they made the $1.20 rate, I presume they could get cars to move the traffic. How is that, Mr. Chambers? If it was the policy of the Sante Fe Company to force its share of this business over fifty per cent. and one of your purposes was to cut the rate to do it, you would probably provide for rolling stock wouldn't you?

A. Naturally. If we thought we could carry more we would provide cars.

Q. Suppose you were to provide your additional rolling stock and get ready for a fight and make your cut in the rate, what would you expect would result? What do you know would result as to the other lines?

A. The Southern Pacific certainly would follow.

Q. Follow suit, wouldn't it?

A. Yes sir.

Q. Meet your rate, wouldn't it?

A. Yes sir.

Q. And meet your equipment?

A. Yes sir.

Q. And the result would be they would get about their share anyway?

A. Just about the same. That is the way we figure.

Q. And as a result you would have your increased expense of providing additional and unnecessary equipment and you would have as much less earnings as your reduced rates would make?

A. That is what would follow.

369 Q. So whether there is any agreement or not or any conference or not, freight rates must be the same?

A. Yes sir; it is a well-settled rule.

Q. That is the condition of the transportation that results whether you agree to it or not?

A. Yes sir.

Q. You have made rather better time this year than the other lines, have you not?

A. I believe we have.

Q. Do you think you have an advantage, or is there any advantage in having a continuous line to Chicago, in quickening the speed?

A. There is some advantage in that, yes sir.

Q. What is your mileage, the mileage over your line between Los Angeles and Chicago, as compared with the new Rock Island line between the same points?

A. I think they are about the same, the Rock Island perhaps a little bit shorter.

Q. Isn't it several miles shorter?

A. I don't know. I understand it is.

Q. Are you not building a cut-off to reduce your distance now?

A. Yes sir.

Q. Whereabouts is that?

A. From just below Albuquerque across to the Pecos Valley branch. I understood the Southern Pacific-Rock Island line was somewhat shorter than the Sante Fe.

By Mr. HERRIN:

Q. Your building that cut-off is to shorter the distance, or
370 have you got any traffic to justify it?

A. Shortening the distance and avoid those mountains, the Glorietta and Ratton mountains.

Q. How much do you shorten the distance by your line?

A. I don't know that I recollect. I heard it but I forget. Eighty-five miles, I think.

Q. As I understand you approximately since you had your lines in southern California in this fruit country to their present extent, this citrus fruit traffic has been about equal over the Southern Pacific lines and your lines?

A. Yes sir.

Q. That was so before you exercised the right of routing beginning January 1st, 1900?

A. Yes sir.

Q. It has not been any more so since?

A. No sir.

Q. Was this routing exercised for any purpose of dividing this traffic?

A. No sir.

Q. Had no reference to that at all whatever.

A. No sir.

Q. Why did you do that concerning this traffic? Why do you continue to do it?

A. Well, the main reason was to have the rates maintained.

Q. Maintain the rates.

A. And one reason was to control the refrigerator cars, the
371 lines over which they operated. We were having a great deal of trouble in getting cars returned from certain lines, and by reason of that we never could tell how many cars we needed to handle the traffic, because we could not approximate or estimate how long it would take to have them returned.

Q. It was difficult to get the eastern roads to bring back empties, especially when they were crowded with traffic?

A. Yes sir; the very best we can do, it is hard to have it done. That is the principal reason for delay of our cars, is getting them back from connections.

Q. How does the exercise of the right of routing enable you to get the cars better?

A. If we find some line that is not returning them promptly, we take away from them all the business we can.

Q. That matter is in your hands and they know they must get the business from you, and that is the pressure you have on them?

A. Yes sir.

Q. If that was exercised by shippers, you could not exercise that or concentrate it, as it is in your hands for that purpose?

A. No sir.

Q. Ought it to take 65 days for a car to make the round trip to the East?

A. It should not.

Q. Take twenty days; that is a very long time to New
372 York, or ought to be, hadn't it?

A. Of course that car returning meets with a good deal of delay, perishable freight, in fact all kinds of freight we usually give preference over the empty cars.

Q. Well, approximately of the sixty five days, how much of that time is used in making the eastern trip, would you say.

A. This year to the East we probably take nine days to Chicago, and for the return of the car from Chicago fifteen days.

Q. That would be fifteen days against nine?

A. If it was on the road returning it would probably take fifteen or may be a little longer unless the cars happened to be short.

Q. How much average time—what takes up the balance of the time of the sixty five days?

A. The balance of the time is on the lines of our connections. Of course there is other conditions that delay the cars. The markets get glutted, and I have known where the freight remained in the car as long as twenty days at a destination in New York. This year we had 200 cars at one time standing on our tracks at Chicago that had been there all the way from five to fifteen days.

Q. Whose fault was that?

A. The shipper, the consignee; probably awaiting better market conditions. The weather had something to do with it.

373 Q. It was no fault of yours?

A. No sir. We had carried it to the destination.

Q. But the shipper for some reason does not give the orders to unload, awaiting for market conditions to improve and for other reasons and a good deal of the time is occupied in that way?

A. Yes sir. I think yesterday I got advice that we had forty cars on our tracks at Chicago that had been standing there since March 15th some of them.

Q. A great deal of this rotted fruit results from that, doesn't it?

A. Yes sir.

Q. It does not result from the delay in transit, but from lying upon your tracks at the eastern destination. Isn't that so?

A. Yes sir; my experience is the delay of unloading at destination is greater than the delay in transit over our lines to Chicago.

Q. If there were no delay in unloading, no unreasonable delay, much of this rotted fruit would be avoided, wouldn't it?

A. I think so.

Q. So that a small part of that only can be said to result from the slow time you make?

A. All of it cannot be charged to the slow time.
Q. The greater part of it is due to the cars lying in the stations?
A. When the fruit is ripe of course every day it is in the car it deteriorates.
374 Q. It may not be the fault of the shipper but whenever the injury occurs that is one of the causes of it, isn't it?
A. Yes sir.

Mr. HERRIN: That is all.

Mr. MADISON: Do you know what the life of an ordinary box car is under the master car builders' ruling?
A. I do not.
Q. Do you know how the life of a refrigerator compares with that of a box car? Is it less or more than a box car?
A. I should say it was less on account of the lining, etc. The moisture gets in between and rots the roof and sides.
Q. And the ice going into it?
A. Yes sir.
Q. You have never estimated the time?
A. No sir.
Q. Do you think your cars make two trips under refrigeration during the year?
A. Oh, they make more than that.
Q. Sixty five days to make one trip?
A. Oh, under refrigeration? I didn't understand you.
Q. They are not liable to make more than one under ice, are they?
A. Well, some of them might.
Q. The majority of them would not make more than one, would they?
375 A. No, the majority would only make one.

Mr. BURKS: No questions.

By the COMMISSIONER:

Q. I suppose, Mr. Chambers, one element in determining this rate is the fact that express time is required?
A. Yes sir.
Q. Of course it costs more to handle the freight under those conditions?
A. Yes sir. That is what we meet from our operating department when we demand service.
Q. When the cars get to Chicago, how much free time is allowed there?
A. Unlimited. We have endeavored at several times to put on the demurrage rule, but we couldn't make it work.
Q. Haven't you any demurrage rule?
A. I don't think there is unless it was put into effect this year. There is none in effect. Citrus fruit is exempt from demurrage rules to most all markets.

Q. If you charge these parties for express time, you have a printed schedule of how many days from here to Chicago?

A. Yes sir.

Q. Why wouldn't it be a fair thing to allow them a deduction from the rate in case your traffic didn't get there on time?

A. We cannot guarantee the time. We do the best we can to make the time. We have a schedule for the ordinary freight
376 that shows even a greater delay than to the citrus fruit.

Q. These people testify here that they would rather have a time of seven or eight days than to have a reduction of ten or fifteen cents?

A. I believe time is best for them.

Q. If you don't make the time for which you are charging them, why shouldn't you make the reduction?

A. We are to the same cost.

Q. It is not their fault if you don't make the time. If you have other freight on the track, you are getting money out of that; they are not getting it. I just ask that for curiosity more than anything else. You say at the present time you have in service 3500 cars of your own?

A. Yes sir.

Q. And that you had arranged for about 500 or 600 other refrigerator cars?

A. I think either 600 or 700.

Q. And from what company or with what company did you make that arrangement?

A. We made arrangements with the American Refrigerator Transit Company for I think 500 cars, and with Swift & Company for 250.

Q. You have actually called upon these companies to put those cars into service?

A. We have, yes sir.

Q. You put in yesterday a list or statement showing the number of cars which had been shipped each month this year. Won't you let me see that statement?

377 A. It is over in the office.

Mr. CALL: Did you give the reporter the details of that?

A. Yes sir.

Q. Did you give it for 1897?

A. 1897 I think was the first year.

(Transcript shown to the commissioner containing the statement.)

By the COMMISSIONER:

Q. Do you remember what the number of cars was that were shipped in November?

A. Very few this year. I don't remember but I think 198 cars.

Q. Do you remember how many were shipped in December?

A. December was light compared with other Decembers.

Q. Do you remember about how many?

A. No, I do not. I will explain to you that we begin the movement of refrigerator cars westbound in September and we accumulate up until the fruit begins to move, so we have on hand in the beginning of the shipping season usually from 1000 to 1500 cars.

Q. It would appear that you shipped 236 cars in November this year, 1120 in December, 1126 in January, 989 in February, and 1730 in March, 5201 cars in all, and you say you have in service about 4200 cars this year?

A. Yes sir.

Q. And it takes a car about two months to get back here
378 if you hurry it around as fast as it can go, so that a car shipped in January would get back some time in March?

A. Yes sir.

Q. Now, if that is so, how does it happen that you have not had cars here to fill the applications of your shippers?

A. Well, probably they are not moving so well this year. Then it takes—I think it takes 400 cars to conveniently supply the loading points daily when the cars are called for in southern California. We have 150 loading points and the cars have to be set first after they arrive—they have got to be set on the repair track and inspected. The ice boxes have got to be inspected as well as the running parts. They have got to be cleaned and tested. We have a day's supply or more on the repair tracks and we have one day's supply in the trains moving to the loading points, and a day's supply at the packing houses, so that it takes about 400 cars. Most any time at a certain loading point—we may have 450 cars at San Diego, 100 cars at Los Angeles and only 25 cars at San Bernardino. A man in Riverside may want to—the Riverside agent may put in an order for 35 cars. All we can supply him is 25 cars.

Q. Now, last season you had in service 1600—1500 or 1600 of your own cars, and contracted with the Armour Company for the balance of your cars.

A. I want to tell you both companies ran out of cars for a while this year. We ordered of the Southern Pacific and couldn't
379 get the cars, and the shipments had to wait in the packing houses and we could not furnish either Southern Pacific cars or Santa Fe cars.

By Mr. HERRIN:

Q. I will ask, with your permission, if the 65 days' average for the round trip includes this time to put the car in shape to load it? Does it include the time from the time it gets East and comes back and starts East again?

A. It is taken from the car accountant's records, the time it starts back—after the receipt back in California.

Q. The time that intervenes between the time of the car's arrival here and being loaded and started back is not included in the 65 days?

A. I don't think so.

By the COMMISSIONER:

Q. Last year you had in service fifteen or sixteen hundred cars of your own, and you had a contract with the Armour Company to supply whatever equipment you might use. Under that contract you agreed to use not less than 1200 cars?

A. Yes sir; I think so.

Q. And you might call for whatever you needed up to—any limit fixed?

A. We could call for up to 1200 cars. They were not obliged to furnish us more than that. But we had arranged with them to furnish more than that. I don't know that we did last season, but did the season before.

Q. So you could, in point of fact, if you desired, arrange with the Armour Company to furnish more cars?

380 A. They were not obliged to furnish the cars, and the season before that they could not furnish the cars we called for. We had to go to another refrigerator line. We bought out some M. D. T. refrigerator cars, which were a very good car. Last season we had no trouble in getting cars to supply the demand.

Q. The season of 1900 you had in service some 4500 cars?

A. Yes sir.

Q. And last season you had in service some 3600 cars?

A. There is no serious car shortage this year or last year.

Q. My question is this: When did you indicate to the car companies the number of cars you would require?

A. Usually in August; July or August.

Q. Could you at a later period have indicated that you needed more cars and obtained the cars?

A. It was possible to do so, but they were not—up to the contract number was all they were expected to furnish, and that is all, of course, we could compel them to furnish, but they did——

Q. Did you make any attempt last season to obtain more cars than you had?

A. We didn't need them. No, we didn't make any attempt. Last season the fruit moved with more regularity than it did the year before or this year.

Q. Your instruction is that the Santa Fe ought to move one-half the citrus fruit?

381 A. Yes sir.

Q. And your instruction amounts to a prohibition against moving more than one-half?

A. No sir; we got as near to that as we can.

Q. I don't mean that you may not move a car or a hundred cars or two hundred cars more than that.

A. We seek to move not more than fifty per cent.

Q. You seek to move not more than fifty per cent. You absolutely do not order the cars although you might. It is your policy not to move more than fifty per cent. of this crop?

A. We base the order for cars on fifty per cent. of the crop as estimated. But I was going to explain about that. There are two or three things that can happen to either decrease or increase the crop. It is a mere guess to start with. I have to go to all the shippers. Rarely you will find a fruit shipper that can estimate the crop within three to five thousand cars, and my own estimates have been better than the fruit shippers. They are generally low, and if we would take their estimates we would be short of cars the past season—for two or three seasons, in fact. Take the season of 1900 and 1901, my estimate was 24,000 carloads for the Sante Fe. Mr. Earl, who was one of the oldest and most experienced fruit shippers in California estimated 18,000 cars, and contended to Mr. Morton that I was away off in my estimate; that I was away too high. Had we provided cars on his estimate we would have been short.

382 Q. Is there any competition between the Sante Fe lines and the Southern Pacific lines for this citrus fruit business in southern California?

A. Well, there is competition. I would say there was.

Q. What kind?

A. Service—a matter of service.

Q. What is the object of that competition?

A. The object is to get what we consider our share. We endeavor to give such service in every way to the fruit shipper that will insure him offering to our line fifty per cent. of the business.

Q. You are bound to get your share anyway.

A. Not necessarily.

Q. Why not? The Southern Pacific won't take more than one-half.

A. They sometimes do.

Q. I am not talking about 150 or three or four hundred cars, but approximately you have an arrangement or an agreement?

A. The Southern Pacific understands just what we seek to take.

Q. And you understand just what they seek to take?

A. Yes sir.

Q. Just explain how, under those circumstances, there is or can be any competition in the handling of this citrus fruit. There cannot be anybody else handle it except one of those two lines.

383 A. No, that is so, but it is in order to satisfy the fruit shipper——

Q. Well, you don't satisfy him. He is in here complaining.

A. He is not dissatisfied. I don't know that he is dissatisfied.

Q. He has been testifying to it for the last three days.

A. He is with the service. As to the division I don't know as he is.

Q. Oh no, it don't make any difference whether you carry it.

A. We try to give him a little better service than the Southern Pacific.

Q. That does not do him any good because you make the Southern Pacific carry it.

A. We don't always.

Q. What is the reason you don't give a quick service now as you used to seven or eight or ten years ago?

A. Our schedule is just the same, but our business is very much heavier. Our business is more than three or four times greater that it was seven or eight years ago. The crop has increased; the business of the entire country has increased.

Q. You refer to the orange business or what business?

A. The general business, the east and west bound business all over the system.

Q. The more business you have the cheaper you can
384 afford to do it.

A. I don't know as to that. Sometimes. I say handling it like we have this year, it would cost us more.

Q. If your business is three or four or five times as great as it was ten years ago, can't you afford to reduce this rate?

A. I think it costs us more to handle the business now. I think there is less money in the citrus fruit business now than there was when there was only 10,000 cars a season, or 8,000 cars.

Q. Why so?

A. The only reason is that we were able to load most of the cars westbound, and we didn't have such a large investment in refrigerator cars which stand idle the greater part of the year. I think that the Sante Fe Company have invested in refrigerator cars—of course we have to provide the cars to carry the traffic to destination—our connections don't help us in that at all—I think the Sante Fe have invested in refrigerator cars upwards of four millions dollars. Of course all those cars are not in the fruit traffic, but they were at one time. Seven or eight hundred have been taken out of the traffic.

Q. Under your arrangement with Armour & Company what did you pay for the use of the refrigerator cars?

A. We paid the regular rate of mileage that we pay to any car line operating over our line with perishable freight; that is three-quarters of a cent a mile.

385 Q. In addition to that, what repairs do you make?

A. For the Armour Company?

Q. No, no, not for the Armour people but for yourself at your own expense?

A. I think they paid for the principal repairs.

Q. So that the cost of providing a refrigerator car under that contract was three-quarters of a cent a mile for the actual miles. That is correct?

A. Three-quarters of a cent west of Albuquerque and a cent a mile east of Albuquerque.

Q. Is that the mileage paid for refrigerator cars east of Albuquerque now?

A. Yes sir.

Q. Is that the mileage paid on refrigerator cars from Kansas City to Chicago, and Chicago to New York when dressed beef is transported now?

A. Well, I don't know about the dressed beef traffic, but we are governed east of Albuquerque by what is paid east of El Paso, and I think it is a cent a mile between the Missouri river and El Paso and Albuquerque.

Q. At any rate you paid mileage and it was either three-quarters of a cent or a cent a mile?

A. Yes sir.

Q. And that was the entire expense to you of providing a refrigerator car?

A. We had to haul the cars out here empty.

Q. You had to haul them back and you paid mileage both ways.

386 A. We didn't pay mileage coming West.

Q. Paid no mileage coming West?

A. Except when loaded with perishable freight.

Q. You got a better contract then than they did in the East. They had to pay both ways there. So your contract was three-quarters of a cent a mile up to Albuquerque and a cent a mile east of Albuquerque, and the same rates westbound if they were loaded?

A. Yes sir.

Q. If they were not loaded you paid nothing westbound?

A. Yes sir.

Q. So that the real espense of furnishing a refrigerator car for this traffic consisted simply of three-quarters of a cent a mile from here to Albuquerque and a cent a mile from Albuquerque to destination?

A. There were other expenses.

Q. What were they?

A. The ice supply.

Q. I am not talking about refrigeration. I am talking about the expense of furnishing the car.

A. I was going to explain that the railroad company has got to supply the ice.

Q. You leave our refrigeration for the time being. I am talking about the relative expense of providing these cars just to hire them for somebody else. It appears you could hire the cars from somebody else at that price. Now, why do you furnish them yourself?

387 A. One reason why there was a very serious objection here in California to the shippers of citrus fruit using the Armour cars and complaints were made to Mr. Ripley, and he promised when the contract with the Armour people and Earl or the C. F. X. people—which was controlled by Mr. Earl of the Earl Fruit Company—that when those contracts expired the Sante Fe would control their own cars.

Q. What were the nature of those objections? Were those objections stated in this case?

A. In the original case; they are in there.

Q. The objection was that the fruit shipper ought not to furnish a fruit car to other shippers?

A. Yes sir.

Q. Do you think you can provide your car equipment and your fruit car equipment as cheaply as you could hire it?

A. I do not. I think it costs us more.

Q. Is that because these cars have to stand idle a part of the time?

A. That is mainly the cause. We have not any other traffic except the citrus fruit traffic to carry.

Q. The Armour car would be put into service on your line to carry this traffic and then go to some other place to carry some other traffic in the off season?

A. Yes sir; but there is another thing: The Armour Company would not supply the cars to us until just about the time to get them to California for the movement of fruit, and consequently we
388 had to move a greater proportion of their cars empty while, with our own cars, we start in to move them in September, and accumulate them here in California, but the delay may offset that cause.

389 (11.) Testimony of W. *A.* Biddle, commencing at page 491 and ending at page 497, testimony taken in 1903.

The testimony last offered is as follows:

"W. B. BIDDLE, a witness produced before the commissioner, having been first duly sworn, testified as follows:

Direct examination:

The WITNESS: May I venture the statement that I started to make. The question was asked yesterday as to whether the railroads recognized that express service was necessary on this business, and Mr. Chambers replied that we did. The question was then asked as to why in view of that fact, some compensation in the way of a reduction should not be made if the time was not given.

The COMMISSIONER: Yes, that was my question.

A. Why some concessions should not be made from the rate. We admit express service is given, but we don't admit that we charge for it. We don't charge any more for the service today than we did when the service was a great deal worse.

Q. I haven't heard any witness who remembered when it was worse.

A. I do remember. My memory is we had a schedule when we didn't make a time as good within three or four days to Chicago as it is now.

Q. So you claim you are professing to give, and ought to give, and will give a better service than you formerly did in the matter of time?

390 A. Yes. I claim we are not charging any higher rate for the expedited service than for the service we gave at the time the rate was established.

Mr. HERRIN: How long have you been familiar with this rate of $1.25?

A. Ever since it was put in.
Q. Do you know when it was put in?
A. Yes sir.
Q. Did you have anything to do with it?
A. I didn't with the making of the rate.
Q. At the time the rate was put in, what time were you making between Los Angeles, San Bernardino and Chicago?
A. I cannot answer you definitely, but I know the time in the early days of the movement of the orange business. I think our road to California was completed in 1886. The schedule time we advertised and attempted to give was not within some days as fast as it is now.
Q. Three or four days longer?
A. I should say so. I should say it was eleven or twelve days; perhaps eleven days.
Q. Now, you have shortened that time up so you have made it within eight days?
A. Yes sir.
Q. And you expect to do it?
A. Yes sir.
Q. Regularly?
A. Yes sir.
Q. You have not increased the rate?
A. No sir.
391 Q. What do you say about this rate?
A. I think it is a low rate. I think it is as low as compared with other California traffic we handle in either direction.
Q. Do you think there is any justification for a reduction of that rate, either from the standpoint of the railroad or the standpoint of the shippers?
A. I do not.
Q. Did you have anything to do with the lemon rate?
A. Yes sir; I was familiar with it from the start.
Q. What was the reason for that?
A. Just as stated by Mr. Chambers. It was a conference between the producers and the railroads, when a time came to do what the railroads could to help the producer where a necessity was shown for it.
Q. Would you foster the orange traffic in the same way?
A. I think so. I don't know any reason why we should not. I understand it was admitted by the growers of citrus fruits when the subject was considered that the necessity was apparent as far as lemons were concerned, and was not at that time so far as oranges were concerned, and that the reduction we made in the lemon rate should not be taken as a precedent for attempting to secure a reduction in the orange rate.
Q. Are you making a cut off or change in your road which will lessen your time?
A. Very much.

Q. Where is that?

A. It is from a point on our Pecos Valley line to Belen,
392 about twenty-five miles below Albuquerque.

Q. Will that shorten your main line?

A. Yes sir.

Q. How much?

A. Something under a hundred miles. I don't know the exact figures,—eighty-five or ninety miles.

Q. And lessen the grades?

A. Yes sir.

Q. At the present time your line is how much longer, if longer, than the Rock Island route via El Paso to Los Angeles?

A. Well, I ought to know, but I don't know those figures. It is simply a matter of adding mileage together. I don't know.

Mr. CALL: I would like to make some inquiries concerning the methods of fixing rates, Mr. Biddle, these general tariff rates. It has been testified in some of the cases that rates—these common traffic rates are fixed after conference between the managers of the roads?

A. Are you talking about this orange rate?

Q. I am talking about this orange rate and the rates generally.

A. If you will tell me which one you are talking about I will try and answer. Are you talking about the $1.25 rate?

A. First, the orange rate.

A. Well, what about it?

Q. I would like to know what the method is by which you fixed the rate?

A. You want to know the method by which that particular rate was fixed at that time when it was put in?

Q. Yes.

393 A. Well, I was not in charge of our traffic at that time. I think that that rate was made by an agreement between the Southern Pacific and the Atchison road.

Q. What has Mr. Countiss to do with this fixing of rates?

A. Mr. Countiss is simply a medium for the publication and dissemination of information as to joint rates, as a matter of convenience and economy to the roads that employ him.

Q. Sort of a joint clerk?

A. He is a clerk. He has nothing to do with the fixing of rates, no more than the printer has. He is not consulted about it even.

Q. He files the tariffs?

A. He publishes the joint tariffs or supervises the publication of the tariff.

Q. By what method would you go to work to change rates if you wanted to change them?

A. From where?

Q. Citrus fruit rates from California?

A. I would make up my mind in the first place whether a change was necessary. I would consult the Southern Pacific people in ad-

vance. If I could convince them that my views were right about it, the rate would be published; I would publish the rate. They would have the information as to what we proposed to do, and would do the same on the same day. If I could not convince them, they might convince me that my views were wrong and I would change my opinion; but, failing in that if I still thought I ought to do it, I would publish the rate. As a matter of common sense and courtesy I would give them the information so they could make the
394 same rate on the same day. If they didn't want to, they wouldn't do it. If we published it, in that way the tariff would be published. It would — published by the Atchison road, and Mr. Countiss would not have anything to do with it, because he has no authority to do anything until it is given to him by the different roads.

Q. What was the method pursued when you made the reduced rate on lemons?

A. Just exactly that. The Southern Pacific Company were conferred with. I don't know whether the proposition originated now with us or the Southern Pacific. That don't make any difference, but we conferred together, and not only decided among ourselves what was proper to do but conferred with the shippers.

Q. Who determined the number of refrigerator cars that were required to move the crop for the present season, in your company?

A. Mr. Chambers, who is on the ground, knows more about that feature of the business I consider, than any man in California, unless it be some one similarly situated on the Southern Pacific.

Q. You have heard his testimony?

A. Yes sir. It is absolutely correct.

Q. Is there a part of it you disapprove?

A. Not a bit, neither that nor anything else.

Mr. CALL: That is all."

(12.) Testimony of M. Lyon, at page 109, and from 113 to 115, as indicated by a pencil mark, testimony taken in 1903.

The testimony last offered is as follows:

395 E. M. LYON, a witness produced before the commission, having been first duly sworn, testified as follows:

Direct examination.

By Mr. CALL:

Q. What is your name and residence?

A. E. M. Lyon, Redlands.

Q. What is your occupation?

A. Orange grower and packer.

Q. Grower and packer?

A. Yes.

Q. Mr. Lyon, how long have you been in that business?

A. Why, since 1888.

Q. Some fourteen or fifteen years?

A. About fourteen years; that is in the growing of oranges. I have been in the packing business, I think, nine or ten years.

Q. Did you hear the testimony of Mr. McLeod?

A. I heard only part of it.

Q. Did you hear his testimony concerning the cost of putting an orange grove in bearing, the cost per acre, and the cost of packing and picking and boxing?

A. I heard it, but I couldn't—but I don't agree with all of it, and I couldn't just pick it apart.

Q. Have you made any calculations as to what the actual cost is per box of putting oranges aboard cars on an average?

A. Well, it varies of course in different orchards, according
396 to the care given to the orchards and the yield, but I should say it would run about 75 cents.

By the COMMISSIONER:

Q. Just what is included in that 75 cents?

A. I would include the raising of the orange and hauling it to the packing house and putting it in the car.

Q. Everything except the interest on your money?

A. No interest on the money.

By Mr. CALL:

Q. The expense for that year, you mean, pertaining to the box?

A. Yes sir.

By Mr. HERRIN:

Q. You put it just as if the owner of the orchard should give it to you and tell you to take care of it, what it would cost you to cultivate and do the work and put the oranges on the car.

A. Yes sir; it would run 75 cents; possibly a little more than that, but I don't think it can be done for less than 75 cents.

Q. Do you pay taxes out of that?

A. Yes sir; water assessments and taxes.

By Mr. CALL:

Q. What is the wild orange land worth in Riverside country?

A. Well, I am in Redlands.

Q. Well, the Redlands country.

A. Do you mean by that land today that is right in the orange section?

Q. Yes.

A. Without water?

Q. Without water.

A. Why, it is worth from—in the neighborhood of from
397 say $150 an acre without water.

Q. What is the water right worth for enough water to irrigate that in citrus fruit?

A. It has cost me at least $200 an acre.
Q. What is the annual charge for distributing water on the land?
A. About ten dollars an acre.

By the COMMISSIONER:

Q. What do you mean by water right?
A. We have got so many different water systems up in our section that it varies, but the most of our companies are mutual companies and a water right is a certain number of shares in that company, and you get your pro rata of the water that they control or own. That does not entitle you to use the water, not without paying for it and what you pay is the assessment on your stock; it is a mutual affair.
Q. So that the water rates represent in that case the cost of constructing the system.
A. Yes sir.
Q. And your water assessment represents the cost of maintaining that system?
A. Yes sir.

By Mr. CALL:

Q. What does it cost to prepare the land for planting, on an average?
A. That varies entirely with the location of the land, whether it is rough land, hilly land, or level land. It will run anywhere from say five—say $10 up to $50 or $75 an acre.
Q. Well, striking an average on it, what would it be?
A. I should think it would come very nearly $50 an acre.
398 Q. What is the cost of planting?
A. That varies, of course, with the cost of trees. The trees have been sold all the way from 50 cents apiece up to $1.25 or a $1.50. In fact they have sold even higher than that. Today I suppose it would cost in the neighborhood of $150 an acre to buy the trees and set them out.
Q. How much does it cost a year to maintain the trees and cultivate them?
A. That varies too according to the amount of fertilizer to work down on the orchard, but I should place it in the neighborhood of $35 to $40 an acre.
Q. And how old ordinarily is a grove before it will pay for the expenses of maintenance and interest on the whole investment?
A. I should say in the neighborhood of seven or eight years.
Q. What is money worth?
A. Six per cent.
Q. You are running a packing house, aren't you?
A. Yes sir.
Q. Any other place than at Redlands?
A. No sir.
Q. How long have you been in the packing business?

A. Eight or nine years; about nine years, I think.
Q. How many cars did you ship last year?
A. About 200.
Q. How many have you shipped this year up to date?
A. I don't know exactly; it is about 160 or 170; somewhere along there.
399 Q. What refrigerator car do you use?
A. Both systems.
Q. Armour cars and Santa Fe Dispatch cars?
A. Yes sir.
Q. What road do you ship over?
A. Both the Santa Fe and Southern Pacific.
Q. They are both in Redlands?
A. Yes sir.
Q. You ship indiscriminately between the two?
A. I can. I have sidetracks from both roads.
Q. Have you any choice between the two roads?
A. Well, I think I have had quicker service on the Santa Fe.

Cross-examination.

By Mr. HERRIN:

Q. This year?
A. Yes sir.
Q. Not last year?
A. Well, last year I thought I had better service on the Santa Fe—quicker time.
Q. How about the year before?
A. The year before was rotten on both roads.
Q. What is the time of the Santa Fe to Chicago?
A. Why, I couldn't give the exact time that they are running to Chicago. I have not had any check on my cars. I sell to one house there and they have not made a report as to time. *No* eastern points I have had—well, this year it has been running from 16 to 20 days into New York.
Q. Does the Santa Fe make as good time this year as last
400 season?
A. Not quite as good, no sir.
Q. How was it in the season of 1894 and 1895?
A. In the season of 1894 and 1895 we used to make Chicago regularly not to exceed eight days and to New York eleven and twelve days.
Q. That was before the business of the country picked up and the wave of prosperity struck us?
A. I don't know whether that had anything to do with it. I thought it was before the railroads took the routing into their own hands.
Q. You thought that had something to do with the speed?
A. That is the time it dropped off.

Q. How was it in 1898 and 1899?
A. I couldn't without refreshing my mind—I couldn't say exactly the year what was the year that they changed—1899.
Q. It went into effect January first, 1900.
A. 1900 that is what I was thinking. Previous to that we were getting good service. Getting good time.

401 (13.) Testimony of James Mills, pages 162, 163, and from pages 202 to 204, inclusive, of testimony taken in 1903.

The testimony last offered is as follows:

402 "JAMES MILLS, a witness produced before the commission, having been first duly sworn, testified as follows:

Direct examination.

By Mr. CALL:

Q. Where do you reside?
A. Riverside.
Q. What is your occupation?
A. I am a nurseryman and orange grower and superintendent of the Arlington Heights Fruit Company, land department.
Q. How long have you been engaged in your present occupation, as superintendent of the Arlington Heights Fruit Company?

* * * * * * *

The COMMISSIONER: Any further questions, Mr. Herrin?

By Mr. HERRIN:

Q. Isn't it more important for you to get a quick service than to have a reduction in the rate? You appreciate, of course, if the rate is reduced, it will lessen, to some extent, the ability of the carrier to give service.
A. The quick dispatch, in my judgment, would be of more value to us than a 10-cent reduction, but I feel and have always confidently looked for it, that we must have both.

By the COMMISSIONER:

Q. What do you mean by a quick dispatch? How many days from here to Chicago?
A. In the past we have sent it to Chicago in six and eight days. In fact, within the last few years the time of sending it to Chicago and New York has increased from three to ten days en route to New York. This year it has gone as far as eighteen and nineteen days.
Q. You must understand now, that this year—I don't know
403 anything about the conditions west of the Mississippi river, but east of the Mississippi river it has been absolutely impossible to get freight of any kind through. The Baltimore & Ohio didn't receive a car from its connections for a whole month. The

Pennsylvania railroad for two weeks didn't ship anything but coal east of Pittsburgh, by reason of the conditions there.

A. Of course we stopped shipping at that time generally, when it gets cold in the east. We are very wary, when it gets cold in the east, not to put our fruit on the track when those conditions exist. I realize, too, that the immense volume of business that has been done has congested, to a large extent, the railroad lines. It is only a question of whether the railroads will equip themselves for what they can see will be necessary to bring our fruit to the market.

Q. You say you would rather have a time of from seven to eight days between here and Chicago, than to have a 10-cent reduction at the present time.

A. As far as I know the conditions, I believe that would be more advantageous to the grower than the small reduction in freight rate. It would stop the further decay, the greater decay. The longer our fruit is en route, especially when it is very ripe, the more the decay will be. Of course that lessens, very greatly, the ability to place the fruit at a good price on the market. If our fruit reaches the market in a good condition, without decay, good and solid, and juicy, it will bring a higher price than if it shows decay.

Q. Time is an essential feature in putting it on the market in good shape.

404 A. Time is the essence of the shipping business in California.

By Mr. BURKS:

Q. I understood you to say that only about 25 per cent. of the output of citrus fruits were grown under the most favorable conditions.

A. Yes sir; I believe so; that is, such ideal conditions as I have related in making my statement.

Q. The remaining 75 per cent. are grown under conditions which are either illy advised or else not under favroable conditions.

A. Less favorable. There are some that are not hurt every year, but when they are hurt occasionally—but when they are hurt it is only occasionally once in four years or so. It takes several years to overcome the injury done to a tree by one night of frost.

Q. Of the 75 per cent., what per cent. would you say were absolutely illy advised, the locations were absolutely illy advised?

A. Well, I would say that under present conditions the cost of the growth and the shipping and the marketing—I would say that at least one-third of that must go out. If they have got to pay the present freight rates and take the prices—that is, that they cannot make a fair income on the capital invested and the labor given to it.

Q. That is not by reason of the freight rate, however, but by reason of the conditions under which the growers seek to grow the fruit.

A. Yes.

405 (14.) Testimony of P. J. Dreher, from Pages 571 to 579, Inclusive, of Testimony Taken in 1903 Before the Commission.

The testimony last offered is as follows:

Mr. DREHER: If your honor please, I am a grower and shipper, and suggest that I might want to say something to the court.

The COMMISSIONER: Certainly sir. You may receive the oath.

406 P. J. DREHER, a witness produced before the commissioner, having been first duly sworn, testified as follows:

Direct examination:

The WITNESS: I am an orange grower and shipper, manager of the San Antonio Fruit Exchange, residence Pomona, California.

The COMMISSIONER: You can make any statement you desire.

A. I have shipped during the past five years about 5000 cars.

The COMMISSIONER: You ought to know something about shipping oranges.

A. I think I do, your honor. I wish to say, your honor, that I am a grower myself and I have about $40,000.00 invested in orange groves. The question of the orange grower is one of getting the fruit to market probably more than the reduced rate.

Q. You mean the expedited service?

A. Yes sir. The service is entirely too slow and the rate is high. If I had the choice between a six day service or a 75 cent rate a box, I would take the quick service. When we began shipping ten years ago in a co-operative way, the time then to Chicago was about six days. I think a car never took over seven days to go through. I am speaking from memory. I didn't know that your honor would be ready to hear me. We then loaded 288 boxes or 20,000 pounds and paid $250.00 a carload.

Q. How long ago is that?

407 A. Ten years ago. The first fruit I shipped was shipped that way. That was the actual running time. Now the average time is eleven days. The Santa Fe occasionally gets a car in ten days, but it is generally eleven and the Southern Pacific is about twelve. We used to consider that to New York the standard time was eleven days. The past two years, since 1900, it has been all the way from sixteen to thirty. The traffic being slow, has necessitated icing, which would not be necessary if the traffic had better time. I have shipped in the month of August for several years oranges without icing under ventilation and got them through in good condition. There were times when the traffic was not congested and went through quickly. If we could get a reasonable time six or seven days to Chicago and nine or ten days to New York, I don't believe ten per cent. of the fruit would be iced. The claim of hauling the dead weight and hauling the ice, etc., could not be

made if they made quicker time. We believe any way that the icing charge is exorbitant. They make slow time, and that forces us to ice, and take something which we do against our will. The circulation of air in the common fruit car, which they have discarded was so much better in the time in which they run that in spite of the car not having the insulation that the present car has got the fruit arrived in good condition practically. In 1895 I spent six weeks in St. Louis during which time I made the experiment of shipping lemons in bulk. I shipped ten cars of lemons in bulk and was at that end to see how they would come through. I spent practically all my time among the fruit shippers. I was informed by men who had been in the business for years, that they used to ship
408 as late as August in these cars and the fruit came through in good condition. It is the circulation of air that goes through there that preserves the fruit when the car is in motion. The overloading of trains, the drawing out of bulkheads and the mashing up of the shipments—that is caused by the overloading of trains. We know that the railroads load sixty, sixty-five and seventy cars in their trains. They put two engines at the head and two more to push. You know what that would mean to a railroad train. As a matter of fact, about one-third to one-half of our cars get to the other end of the road with boxes mashed and in bad condition of some kind. The matter of claims is simply enormous. About every third car we ship we have got a claim against them either for fruit stolen in transit or boxes smashed and sometimes there are many of them. This I think is all due to overloading of cars and trains, and to the rough usage which cars receive in transit. I said to Mr. Chambers a few days ago—perhaps today—I don't know—that in my judgment that if they would run a train through with 25 or 30 cars as they used to do it would be better for the railroads. I am not a shipper, and never bought a pound of fruit in my life. I am manager of a co-operative organization and the fruit we handle is grown by us. We are not speculators; we want to put our fruit in the market in good shape. The matter of competition of course I don't wish to talk on, I will say for the past five or six years no man has asked me to ship a car of oranges over any certain line.

Q. I don't think you need spend any time on that?

A. The matter of claims may be of interest to your honor.
409 The railroad companies do not pay all these claims as promptly as they might. I have got damage claims that were filed two or three years ago and are not settled yet.

Q. We haven't anything to do with that. I don't know of any place they pay claims quickly. If they did they would not have money enough to pay them.

A. There is an insufficient number of cars. There are times when cars are not furnished to us and we have suffered great loss. In 1900 a great deal of fruit was wasted because cars were not furnished. The output in the gentleman's statement is correct which I heard,

the gentleman that just preceded me. He says there are 88000 acres planted to oranges.

Q. He said citrus fruits.

A. Citrus fruits. I will take that back. I believe every acre of citrus fruit in oranges will produce a carload.

Q. The testimony here has been that oranges go about 200 boxes to the acre.

A. That would be 50,000 carloads. An acre well tilled will produce a carload. I have a statement which I made up for Senator Bard to use in fighting the Cuban reciprocity in which I have the actual cost of investment, and the cost of care, and the gross returns on the investment of 200 orange groves. I would like to send it in. Mr. Chambers I think maybe sent it to you.

Q. He did make that statement.

A. I have the signed statements of these growers in my possession if your honor wishes them, which shows that the present rate with the revenue on oranges perhaps is not very high.

Q. How does it compare now with what it was ten years ago?

410 A. I would say ten years ago profits were ten times as big as they are today, the net returns.

Q. Why?

A. Because the fruit at that time was not so long delayed en route, the quantity was not so large, it went to market in better shape, and of course there was less of it.

Q. Did you get a better price for it?

A. We got a better price, yes sir.

Q. How much better was the price ten years ago than it is now?

A. Ten years ago we got three to four dollars a box for oranges where we get two dollars now. The railroads charged us less at the weight of a box. They took it at an estimated weight of 70 pounds. They now estimate the weight at 72 pounds.

Q. That is something I hadn't heard of before. How long ago was the estimated weight 70 pounds?

A. That was changed six or seven years ago, wasn't it, Mr. Sproule?

Mr. SPROULE: Yes sir. The size of the box was increased.

The WITNESS: I beg your pardon. I am an orange shipper and it has not been increased. There has been no increase since I have been in the business and that has been ten years—1892. If there were any smaller boxes shipped I never knew it. The estimated weight was changed about seven years ago. The railroad company thought they were not getting enough and they put on an extra two pounds.

By the COMMISSIONER:

Q. Is the estimated weight any more than the actual weight now?

411 A. No sir. At times it is and at times it is not. There is a difference in the weight of the boxes. There is a difference

in different localities. In some localities oranges will weigh three or four pounds per box more than others. In 1901, for the purpose of meeting this very question for days at a time we had fifty or a hundred boxes weighed each day at one of our packing houses, and the total output of that year's shipment showed that we packed less than 65 pounds of fruit into the box. That included waste. It was between 64 and 65 pounds—64 pounds and a fraction that we put into the box. A box will weigh from eight to nine pounds net.

Q. The material fact would seem to be, was the box any bigger?

A. It was not.

Q. The weight was changed from an estimate of 70 pounds to an estimated weight of 72 pounds?

A. Yes sir.

Q. The present weight you think is about the actual weight?

A. Yes sir.

Q. The old weight was about the actual weight?

A. Yes sir, I think so. We are packing the box perhaps a little fuller. We pack it as full as we can and press it down, and I think the weight is not excessive. I think the boxes will weigh that—no question about that.

Q. Anything more you wish to say?

A. I don't think there is unless you want to ask some questions.

The COMMISSIONER: I have been impressed with the fact that an expedited service is really more important to you gentlemen than any slight reduction in this rate, but the commission have no
412 power to order an expedited service. We are not running the railroads, and we haven't anything to do with that. All we can do is to order a reduction of rate if we thought it was excessive.

A. Well, I think that the 75 cent rate would be a reduction. Of course it would be a reduction of 15 cents a box and would be quite a help to the grower. Now there is another matter, the cars. If the cars were large enough the railroad company could as well get us to load 384 boxes. They have squeezed the minimum up on us.

Q. There has been testimony here that some shippers load 27000 and some pounds in these forty foot cars?

A. We have for years contended with both Mr. Luce and Mr. Chambers, the latter whom I meet personally oftener, that the overloading of a car was a dangerous proposition. If we load six tiers across a car and two tiers high, that should be the maximum load for that car. We would be willing to load all the cars that will take 384 boxes at that rate, but the smaller cars won't take but 300. When we are compelled to load the smaller cars and put in the minimum weight we always have broken boxes.

Q. What do you mean by a smaller car?

A. They have a 36 foot car, a 38 foot car and a 40 foot car. I believe they have discarded the service of a 34 foot car for eastern shipments.

Q. You say you couldn't get 26000 into a 36 foot car?

A. No sir. We are obliged to load 26 boxes on top, which bruises and injures them. We suffer loss on nearly every shipment of one kind or another.

Q. Isn't it a fact that you have to put 26 boxes on top?

413 A. Yes sir. There is another thing, your honor. We have had tests made of a great many cars and these boxes on top, there is more heat or hot air, and there is twice as much decay as in the lower tier. The car going through can be inspected, and if there is decay at the upper part it can be found out. The lower part of the lower boxes may be absolutely sound. Generally that is so. This shows that the higher we load the car the more dangerous it is and the more decay we suffer. I would say one more thing. I was one of the parties who pled with the roads for the reduced rate on lemons. I said we would not make it a precedent to ask for a like rate on oranges, but I wish to say this that our lemon growers have got more satisfactory returns for the last six months since this low rate has been made than they have for years before. They have got more money for a six months' crop than for a year's crop. We have been able under this thing to crowd the lemons into market. We had 21 cents advantage over former rates. We took our chances and we conquered. We have forced the other fellow out of that much of the market. It was a good thing for the railroad company to do, and they did it in time, because the lemon orchards one-half of them have been rebudded to oranges, and the other half either stands with bankruptcy staring them in the face or they are rebudding, and it was a question of reducing the rates whether this would revive the industry or the tree would be rebudded.

Mr. CALL: You may explain how you change lemon trees into orange trees?

A. In two years we get a bearing orange tree out of it.

Mr. CALL: That is all.

The COMMISSIONER: I am obliged to you.

414 GEORGE A. PARKYNS, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposed as follows:

Direct examination.

By Mr. CALL:

Q. State your name, place of residence and occupation.

A. George A. Parkyns. Assistant general freight and passenger agent, Southern Pacific Company. Los Angeles.

Q. What is the scope of your employment by the Southern Pacific Company?

A. Looking after freight and passenger traffic in this territory.

Q. In what territory?

A. In the territory south of Santa Barbara, south of Mojave, to and including Yuma, down as far as San Diego.

Q. That includes freight originating, going out from that territory, and coming in?

A. Yes sir.

Q. State what is the rule or regulation in force by the defendant railroads as to routing citrus fruit freight over lines beyond the lines of the defendant initial carrier?

A. I don't quite get what you mean by that.

Q. State who has or reserves the right to route?

A. The initial carrier.

Q. How is that regulation enforced or made by the initial carriers? Is it upon the way bills or shipping bills?

A. It is in the body of the tariff.

415 Q. In the body of the tariff. The tariff filed by the railroads with the Interstate Commerce Commission?

A The tariff filed by the railroads with the Interstate Commerce Commission.

It is stipulated that all objections to which this testimony is susceptible may be made before the court and need not be made at this hearing.

Q. State, Mr. Parkyns, what that regulation is, or the substance of it.

A. Oh, I could not give it word for word, but the substance is that certain rate conditions which carriers give to the shippers, for consideration of those rate conditions the initial lines shall control the routing.

Q. Shall control the routing?

A. Yes.

Q. Beyond the lines of the initial carriers?

A. From point of shipment to destination.

Q. How long has that regulation been enforced by the defendant initial carriers?

A. Oh, I could not tell you the number of years; for several years.

Q. Well, from about January 1900, was it not?

A. About that, yes.

Q. Under that regulation, then, it is incumbent upon the initial carriers to route the citrus fruit traffic over all lines to destination?

A. The initial lines have the privilege.

416 Q. Well, you have to send the freight by some route when it goes out?

A. Sure; yes.

Q. Well, now, when you do that, how many different lines are there that you ship over beyond the lines of the initial carrier?

A. Oh, that depends upon the destination.

Q. Well, I am speaking of the orange freight business and the ordinary destinations. How many are there of those initial lines?

A. Well, for example, if it was going to Chicago, there might be only two besides the Southern Pacific Company.

Q. Well, suppose it is going to the Atlantic territory?

A. Well, then there might be three or four or five. It depends.

Q. By what method, then, and upon what basis do you route over those connecting lines?

A. Well, you will have to go back to the year before when arrangements are made for refrigerator cars to handle the business.

Q. Well, you commenced this routing rule in the beginning of 1900. What method did you pursue in order to award or divide that traffic over those connecting lines to them.

A. I could not say. I was not in this territory at that time.

Q. How long have you been in this territory?

A. I have been in this territory two years.

Q. You have been here three years?

A. Two years.

Q. Two years. Well, what is the method pursued now?

417 A. The method pursued now is, we try and estimate the number of carloads which will be shipped. So many of those carloads are tributary to the Santa Fe rails; so many to our own rails. Then we arrange for the number of refrigerator cars to be brought West to handle that crop. And of course we have to arrange for so many cars over the different lines.

Q. Well, I am speaking of the connecting lines.

A. Well, I am speaking of them, too; over the different lines. By the term "different lines," I mean our different connections.

Q. Now, you don't send all that freight over one connecting line?

A. No.

Q. Beyond Chicago?

A. No.

Q. Then, who determines how much is to go over each of those connecting lines?

A. That is done in the general office.

Q. In the general freight office?

A. Yes sir.

Q. By what officer?

A. By the freight traffic manager.

Q. Mr. Sproule?

A. Mr. Sproule.

Q. And he directs you how to send out that freight over those connecting lines?

A. After I have given him the number of cars that I think we will handle. He has to arrange, then, for the refrigerator

418 cars to come West.

Q. Does he give you those directions at the beginning of the year, or, I would say, of the orange freight business for a given crop?

A. He gives me those arrangements at the first of each season, he beginning of each season.

Q. And states what percentage is to go over each line?
A. States the number of cars approximately. That is liable to change.
Q. And then, at the beginning of the next season, he gives you another?
A. Yes sir.
Q. That is called a "percentage table," is it not?
A. You can call it so.
Q. Well, that is what you usually call it, "percentage table" or "percentage sheet"?
A. Yes, it is a percentage sheet, in one sense of the word.
Q. How long since you have received a percentage sheet from the general freight office?
A. Well, I should think it was last October, I guess.
Q. You have not had any for this year's crop?
A. No sir.
Q. This year's crop will commence about the 1st of November?
A. Yes.
Q. How did that percentage sheet for last year's crop compare with the percentage sheet of the year before?
A. I could not tell you.
Q. Well, now in carrying out that percentage table from
419 the general freight office, you find that it sometimes fluctuates so that you cannot give the exact number of cars to each of these connecting lines, do you not?
A. Yes; occasionally.
Q. And so you have to send out to local agents, from time to time, tables to correct those tariffs?
A. We don't send out to the local agents.
Q. You don't send out to local agents?
A. No sir.
Q. You do the business all right from——
A. When you say "local agents," we do the business through Los Angeles and Colton stations.
Q. That is where you do all the routing from?
A. Yes sir.
Q. And who attends to that business here in Los Angeles?
A. The local agent,
Q. And who attends to it in Colton?
A. The local agent at Colton?
Q. Who is he?
A. Well, there is a new man there, Mr. Donnetin.
Q. How long has he been there?
A. Been there about two weeks.
Q. Well, do you not have to correct those percentage tables from time to time so as to reach the ultimate necessary division at the end of the season?
A. It has not been done, to my knowledge.

Q. Well, have you, in your office, among your files, the percentage table for the present year?

A. No sir.

Q. During the last year?

420 A. No sir.

Q. Where is that percentage table?

A. For last year, or for this——

Q. Yes. We are now at the close of the season. For this preceding season?

A. I think I may have figures showing the number of cars which were ordered west-bound, which would mean the movement east-bound.

Q. The cars west-bound?

A. The empties coming west-bound, which would mean the same movement east-bound.

Q. Well, what have you done with that percentage table for the east-bound business?

A. Well, that would be in our regular office file.

Q. It would be here?

A. In our office files.

Q. Well, then you can produce that?

A. Yes, I suppose I could.

Q. Well, will you produce that before the examiner.

Mr. DUNNE: Well, we will consider that matter. You had better let us pass upon that, Mr. Parkyns.

The WITNESS: All right.

Mr. CALL: Mr. Examiner, I desire to have the witness produce the percentage table, covering the division of east-bound citrus fruit traffic during the present year, up to the beginning of the last year's season; and I would like to have an order made for the production of that document.

The EXAMINER: Very well, Mr. Parkyns, you will produce the document asked for.

421 Mr. CALL: I will postpone the taking of Mr. Parkyns' testimony until he produces this percentage table, because I want to examine him in reference to it, and will recall him when he produces it. And I will excuse you temporarily, Mr. Parkyns, until you can get that.

422 D. W. McLEOD, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct examination.

By Mr. CALL:

Q. What is your name, residence and occupation?

A. D. W. McLeod, Riverside, is my residence. Do you want the number of the street?

Q. No. Riverside.

A. Occupation—I am a horticulturist and fruit shipper.

Q. How long have you been engaged in handling and shipping citrus fruits?

A. Probably about fifteen years.

Q. You are familiar with the present rule of the Southern Pacific and Santa Fe railroads in and by which they reserve to themselves the right to route citrus fruit over lines beyond their own roads, over connecting lines, are you not?

A. Yes sir.

Q. That regulation has been in force, I believe, since about the first of January, 1900?

A. I don't remember the date, but it is about three years.

Q. How extensive were your orange and citrus fruit shipments?

A. My own?

Q. Out of southern California, yes sir, in your charge?

423 A. Well, about 200 cars, annually.

Q. 200 cars a year.

A. A year, yes sir.

Q. How long has it run at that rate?

A. How long?

Q. Yes sir.

A. Oh, it has averaged about that for the last eight or ten years—five or six years, may be; that is, that I have been handling it.

Q. State, if you know, what the operative effect is of that rule, of the carrier's reserving the right to route, upon the citrus fruit industry and upon the interests of growers and shippers of citrus fruits.

A. Well, the principal point, to my mind, is that when we had the privilege of routing our cars we got better service. Instead of being twelve or thirteen days getting to Chicago we used to get there in seven.

Q. Before the rule was made?

A. Before the rule was made, yes, and perhaps a little previous to the ruling. We used to get service, for there was competition between the Santa Fe Company and Southern Pacific. We would get a six days' service to Kansas City. Now it usually takes from eight to nine, and sometimes longer. But we always made Chicago in seven days, unless there was some wreck or something to prevent,

and now it takes, usually, from twelve to thirteen. I have had one car this last season that was thirteen days getting to St. Louis. That ought to be a seven day time, according to the old regime.

Q. In what manner does the routing regulation affect that
424 time to make it so much longer than it was before?

A. If we route a car over a certain road beyond the Missouri river, those people are looking out for that car; they know it is coming to them, and they keep tracing it and following it up, and if it is not on time, why, they know why it is not. That is one advantage.

Q. That is, when they were competing with each other for that business, they were active.

A. They were active; that is the idea.

Q. And since the routing regulation has gone into force, so that the business is arbitrarily divided, you think they have lost their activity?

A. Well, that is our opinion.

Q. And do not compete for business?

A. That is the idea. We don't get the service. That is, the fruit is longer in transit, and being a perishable article, of course it is liable to decay.

Q. Well, what other effect, if any, does this routing rule have on the citrus fruit business?

A. We have better facilities for diversions in case we have to divert our car, and we know where it is going and know where it is. Now, for instance, like this: I originate on the Santa Fe, and sometimes the Santa Fe agent tells me I cannot get any of their cars, I have got to take Southern Pacific cars. And they won't give us any idea what the routing is to be. We don't know anything about it. We simply bill the car to a certain city, and perhaps in four of five days after that we may get notice that it went by such and such a route.

425 Q. What is the practice concerning diversions that you speak of?

A. Well, if the car is not sold and it is what is usually termed a "tramp" car, if we sell it in transit, of course it is diverted to whatever city will take it.

Q. That is, you bill the car to a certain destination?

A. We bill the car to a certain destination, with a view to diverting.

Q. And with a view of diverting it, and before it reaches its destination you divert that car to where you can sell it.

A. If it is sold, yes sir. If it is not, to its other destination.

Q. Well, is that a universal practice?

A. Well, it has been, a good many years.

Q. How long has that been the custom and practice?

A. Ever since I have been shipping.

Q. With the Southern Pacific and Santa Fe roads, both?

A. Yes, both.

Q. And all shippers?

A. And all shippers that I know anything about. Of course the business now is done through the California Fruit Agency.

Q. It is a universal rule?

Q. Yes sir.

Q. As to citrus fruit.

A. It has been. I don't know what it is actually now.

Q. Now, state again how that rule operates to prevent diversions and handling of the crop.

A. Well, in the first place, we don't know where our car is.

426 And we originate on the Santa Fe, and suppose the car is a Southern Pacific car. We have got to go — the Santa Fe to have that car diverted, and they have got to trace it up through the Southern Pacific offices and find out where that car is. And I have had personal diversion orders that failed to be delivered from one clerk to another and the car didn't get there at all.

Q. Your packing house is on the line of the Santa Fe?

A. On the Santa Fe, yes.

Q. And do you always ship over the Santa Fe, then?

A. We have to. That is, we originate on the Santa Fe, but we ship about half of our stuff over the Southern Pacific. Why last season, there was for a month there, in the month of March, I think it was, we could not get a Santa Fe car.

Q. You don't ship over the Southern Pacific, then, as a matter of choice?

A. No sir, because we originate on the Santa Fe, and it being the shorter road we naturally wish to send our fruit that way.

Q. Then why is it you don't ship all over the Santa Fe?

A. Can't get the cars.

Q. Who furnishes you the cars that go over the Southern Pacific?

A. The Santa Fe do.

Q. They furnish you Southern Pacific refrigerator cars?

A. Yes sir.

Q. And then divert them to the Southern Pacific road?

A. Deliver them to the Southern Pacific road at Colton.

Q. And the Southern Pacific gets the freight.

427 A. The Southern Pacific takes the car to destination, or its own terminus, and delivers it to its own connections in the East.

Q. And you can't control that yourself, under these regulations?

A. No sir; we have no control over it at all.

Q. What other effect does this rule have on the citrus fruit business as to operating to favor one shipper as against another? Or, how could it operate?

A. Well, from personal knowledge I could not answer that question. But, one of my competitors, to have the privilege of routing, and the other one to not have, I would consider it to be quite a detriment.

Q. If one got a routing where he wanted to route and the other one was refused that right, what effect would that have?

A. He might route his car, if he could find out I was going to sell a car to a certain point, he might shove a car in there and cut me out, if I didn't know about it, if one man had a privilege of routing and another hadn't. Of course if we were all treated alike, then I presume it would amount to the same thing.

Q. But in actual operation, this rule, you think, may be used to favor one and to discriminate against another?

A. I think there is no doubt of that. It can be done that way. I don't say that it is.

Q. What effect does this routing rule have on the citrus fruit business as compared with other traffic?

428 A. Well, I should think if it was vitrified pipe that was going through, it wouldn't make any difference if it was forty days in transit; but with perishable articles like citrus fruits, it is very important to get quick service.

Q. Well, take apples and deciduous fruits. Isn't it important that they should go through?

A. Well, it would amount to the same thing with them—any perishable property.

Q. Well, if the regulation was enforced as to citrus fruit and was not enforced as to deciduous fruits, would that be discriminative?

A. I should think so; discriminating against one industry.

Q. Discriminative against the citrus fruit industry?

A. Yes sir. I should say so. That would be my judgment.

Q. Well, what effect does the rule have as to getting the freight through on the most expeditious route, or otherwise?

A. Well, we have had the poorest service in the last three years we have had in the last ten—seven previous.

Q. Well, when you ship, or have been shipping, shipping citrus fruit to eastern points, do you or do you not endeavor—or before this regulation went into effect, did you or did you not endeavor to ship over routes that were expeditious and open, not blocked by traffic or otherwise impeded?

A. We always tried to send it by the most expeditious route, the shortest and quickest we could get it there.

Q. And now you have no control over that?

A. None whatever. We always consider the Santa Fe as a much shorter line than the Southern Pacific, and when fruit is to be sent

429 away around by Sacramento and Omaha we consider it takes considerably longer time than it does to go direct by the Santa Fe, and we prefer to ship by the Santa Fe for that reason.

Q. The Santa Fe uses what refrigerator cars?

A. They use their own now.

Q. What are they called?

A. They are called—let me see—R. F. D., I think.

Q. Santa Fe Refrigeration Dispatch?

A. Yes; S. F. R. D., Santa Fe Refrigerator——
Q. And Dispatch?
A. S. F. R. D. are the initials.
Q. Well, they are called Santa Fe cars?
A. We call them Santa Fe cars, yes sir.
Q. Do you know whether they belong to the Santa Fe or not?
A. We don't.
Q. Are the Armour cars or any other cars used over the Santa Fe?
A. There were a few cars brought in there last year. I think they were built by Swift, but I am not positive about that. They were called A. R. T. cars.
Q. What cars are used over the Southern Pacific lines?
A. They use the Armour cars.
Q. They don't use the Santa Fe Refrigerator Dispatch cars?
A. I have never known them to. We can't ship on Santa Fe cars over the Southern Pacific from Pachappa.
Q. Well, can you ship an Armour car over the Santa Fe?
A. Yes, sometimes; occasionally. They tell us——
430 Q. Well, does it really go out over the Santa Fe?
A. Well, they tell us we can do that over the Santa Fe if we want. Occasionally. One or two cars came last year that way. We cannot get—sometimes we ask for a Southern Pacific car to ship to San Francisco for local market. We never can get it on the Santa Fe. They always give us a Santa Fe car and want us to send our fruit all by the Santa Fe to the San Francisco market.
Q. Now, then, this year when you were shipping over—or wanting to ship over the Santa Fe, you were furnished with Armour cars, then, when they have no cars of the Santa Fe Dispatch?
A. Not for the Santa Fe shipments, except in one instance. There was one car came there they told us we might use.
Q. Well, they run out of cars, you say, on the Santa Fe, frequently?
A. Then they give us Southern Pacific cars, yes, give us Armour cars.
Q. And you have to take them or nothing?
A. Yes sir, or none at all.
Q. And if you do take them the fruit goes out over the Southern Pacific?
A. It is so told us. We don't know where it is going. We simply bill the car through to destination and we take it for granted it goes over the Southern Pacific at Colton, because they tell us it is Southern Pacific car, you know.
Q. That is, who tells you?
A. Santa Fe agent.
431 Mr. CALL: The Santa Fe agent. That is all.

Cross-examination.

By Mr. DUNNE:

Q. Mr. McLeod, I understood you to say that during the last two or three years the time of service to Chicago has been longer than it was previously.

A. Yes sir, I say so.

Q. For instance, at a time prior to the last two or three years the time of service to Chicago would be some seven or eight days and during the last two or three years it has been some eight to ten or twelve days, even.

A. That has been my experience.

Q. And I understood you to say that when you did your own routing over connecting lines, when you controlled the routing, these connecting lines would look out for a car when they knew it was coming; and you seemed to connect that thought in some way with the proposition that that expedited the transit. Will you please explain your meaning a little more fully.

A. Well, I believe that.

Q. Explain your ideas a little more fully.

A. Well, my idea is that we got better service when we had the—men would come in off the different lines and solicit the trade, solicit our business, and they would naturally look after the business they would solicit when they had a fair, open field.

Q. Do I understand you, then, that you ascribe the differ-
432 ence in time of service to the competition among the connecting carriers in bidding for the shippers' business at the point of origin?

A. No sir, not so much that as in the lack of competition between the originating business, the lack of competition between the Santa Fe and Southern Pacific. It is more in that than any other, because there was not the territory to travel over.

Q. Well, then, as I understand you, Mr. McLeod, your explanation of the difference in time of service in the last two or three years as compared with the service previously is that it is due to what you call lack of competition between the initial carriers.

A. Partly that and partly their connections in the East. Taken all together, taken as a whole.

Q. But you regard the connecting carriers in the East as relatively an unimportant factor?

A. As one of the factors.

Q. Yes. But relatively unimportant.

A. Not quite so important as the long haul. It used to be that the Southern Pacific and Santa Fe would compete for our business.

Q. Now, then, let me ask you this question: Have you any other explanation to give of the difference in time of service during the last two or three years and the years previously, except the explanation that you have just made?

A. I don't know of any special explanation, as far as I know anything about the business.

Q. Very well. That answers the question, Mr. McLeod. Now, I understood you to say that you are a shipper, Mr. McLeod,
433 yourself, to the extent of some 200 cars a year?

A. Well I represent an association that sent out that much fruit; but I will make an explanation there, that we ship now through the California Fruit Agency, and of course they would be called the shippers now, that is, they would be the shipper, really, although we are the owners of the fruit.

Q. Well, now, let me understand. The California Fruit Agency is a corporation or an association here in Los Angeles, is it not?

A. For the shipping of fruit, yes sir.

Q. For the shipping of fruit?

A. Yes sir.

Q. And when you say that you are a shipper of fruit, you mean that you are a shipper of fruit in so far as you are represented in this California Fruit Agency?

A. Yes sir, and I furnish the fruit to the agency to handle. That is, we are the owners of the fruit, in other words.

Q. All right. Now, I want to understand the connection between you as the original grower, the producer of the commodity, and the California Fruit Agency at the other end of the line, which is the shipper. Now, you grow oranges upon your property here, do you not?

A. Yes sir.

Q. And you haul those oranges to some packing house?

A. Yes sir.

Q. Those oranges are packed and made ready for shipping?

A. Yes sir.

Q. And then they are taken hold of by the California Fruit Agency?

434 A. Yes, sir.

Q. Well, now, when you raise the fruit upon your orchard, your orange orchard, who takes hold of that fruit before it reaches the California Fruit Agency? Is there any other intermediate association than you, or exchange?

A. Yes, the Riverside Fruit Exchange is the original shipper. They ship to the California Fruit Agency in the East or whatever point. For instance, the Riverside Fruit Exchange is the local organization, a corporation, and my association is one of the members of that association. We are a co-operative agency.

Q. The Riverside Fruit Exchange is a sort of district organization, is it not, of fruit growers?

A. Yes sir.

Q. Are there other district organizations of a similar character?

A. There is the Citrus Union, also, there, but we do our business through the Riverside Fruit Exchange, and the Riverside Navel Orange Company, which I represent, is a branch of the Riverside

Fruit Exchange. The Riverside Fruit Exchange, then, is the shipper, and when we bill out a car, we bill it as from the Riverside Fruit Exchange, signed by the Riverside Navel Orange Company. That is, it is our car. It passes through this figure-head, if you choose to call it, and is shipped to the California Fruit Agency at Omaha or any other point.

Q. The California Fruit Agency is the distributor?

A. The selling agent, yes sir.

Q. Yes. That is an association?

435 A. Yes sir, corporation.

Q. Now, are you connected in any way with the California Citrus Union?

A. No, sir.

Q. That is another association here?

A. That is another association, equivalent, if you choose to call it, to the Southern California Fruit Exchange. There is the Southern California Fruit Exchange, which is made up of a number of exchanges, all through southern California of which Riverside is one.

Q. The Riverside is your district association?

A. That is my district, and went into the Riverside Fruit Exchange; that is part of the Southern California Fruit Exchange. The Citrus Union is made up of various associations in various localities, and makes up the other factor in the California Fruit Agency.

Q. Then, as I understand it, the production of oranges in this territory is included within the operations of the California Citrus Union and the Southern California Fruit Exchange?

A. Yes sir; that is, largely. There is some outside of that, of course, but the bulk of it is in that now.

Q. Almost all of the orange production, the citrus fruit production, is comprehended within the operation of the California Citrus Union and the Southern California Fruit Exchange?

A. Its business comprehends about ninety per cent. supposed to be, now.

Q. The individual growers turn over the product to these

436 associations.

A. That is right.

Q. And then, as I understand it, these associations, acting through the California Fruit Agency, distribute the product?

A. Yes sir. Sell it and make the returns to us.

Q. So that among the individual growers, in so far as they are members of these associations, there is no individual competition, is there?

A. Let me understand your question, sir.

Q. The individual growers do not quarrel among themselves for the business; they turn the business over to these associations, and these associations, through the California Fruit Agency, distribute the product throughout the markets. Is that correct?

A. Those who are in the associations do that.

Q. Yes sir.

A. Yes sir.

Q. Very well. And how long have these two associations, the California Citrus Union and the Southern California Fruit Exchange—how long have they been in existence and operation in connection with the California Fruit Agency under the conditions that you have described?

A. Well, what do you mean by that last clause?

Q. You have been explaining to us what they are, what they comprehend.

A. Oh, since April the first of last year.

Q. Since April first, 1902?

A. 1903.

437 Q. 1903, rather.

A. Yes sir.

Q. That is the present year.

A. Yes sir, the present year.

Q. Now, how does the California Fruit Agency, representing these two associations, which stand between the fruit agency and the individual grower in the background—how does the California Fruit Agency market the commodity? How does it distribute the commodity among your consumers?

A. Well, it sells it by selling f. o. b., by selling in transit, by selling on delivery—just any way they can make a sale to the best possible advantage.

Mr. CALL: Please note that all of this testimony is objected to as incompetent, immaterial, irrelevant, and not proper cross-examination, and that I reserve those objections to all of the examination.

Mr. DUNNE: Certainly.

Q. The orange product of this territory here which is comprehended within the operations of the California Citrus Union and the Southern California Fruit Exchange, that product is marketed exclusively by the California Fruit Agency, is it not?

A. Yes sir, as it is at present.

Q. Now, does the California Fruit Agency, as a matter of general operation of its business for the purpose of marketing its product—does it send the oranges, the citrus fruit, upon the road to some remote, fictitious designation, and then while the property is in transit dispose of it as they deem best, or, upon the other

438 hand, does it send the property to a designated market, a genuine designated market? What is the operation and policy in that regard of the California Fruit Agency as at present constituted?

A. Well, the experience in the past has been that cars that were to be sold in the west, if not sold before starting, were routed to Omaha or Kansas City or Argentine, and then sold before they got there and diverted from those points; and other cars that they thought there was a better market for, they would send to Chicago

or to New York, and those that would go to the auctions, they would send them direct. That has been the custom for a number of years that the Southern California Fruit Exchange and the California Fruit Agency have adopted the same methods. Sell what they can before the fruit starts, and after it starts sell it in transit by wire.

Q. Well, the California Fruit Agency sells what it can before the fruit starts?

A. Yes sir.

Q. But what methods does it follow for the purpose of obtaining buyers?

A. Why they have agents in the different cities.

Q. They have agents in the different cities?

A. Yes sir.

Q. And is it the policy and practice of the California Fruit Agency to send to each particular city or market so much of the product of the oranges as will respond to the conditions of the market as they are advised to exist?

A. That is the intention. That is the present policy and intention.

Q. Now, is not that a departure from the policy and prac-
439 tice as it existed under earlier conditions?

A. I think not.

Q. Was it not the practice and policy under earlier conditions for the local exchanges here to send fruit, citrus fruit out upon the road, and to mail to the jobbers prices, to get bids from the jobbers by telegraph, and then divert the fruit to the jobbers accordingly?

A. I have never known that to be the case.

Q. You have never known that to be done?

A. No sir. It may have been done, but not to my knowledge.

Q. Now, how long has the California Fruit Agency been—or has it followed from the beginning, the practice of sending to particular markets so much of the citrus product as it is advised will respond to the conditions in that market?

A. Well, it is in transit now—it is in formation now. It is not thoroughly established yet, and its policy is not fully established as yet. It is just the beginning.

Q. Is it actually carrying out that policy now?

A. Well, there is no fruit being shipped at present. When the season opens we can tell a little more about it.

Q. Yes, but that is the policy and practice of the association now, isn't it?

A. Well, it will be, I think. As far as we get information, I think that will be the policy; but it is not yet established. You see it is a new concern.

Q. Has the California Fruit Agency sent any fruit into the market since it was organized?

A. Oh, yes, sir.

Q. Has it sent it upon the policy and practice that you
440 have suggested here?

A. Some of it.

Q. Some of it.

A. Some of it was sold, as I said, f. o. b., some was sold in transit, some was sold on delivery. Some was sent to the market and the market would not take it and it was diverted from that market to another and sold in another market.

Q. But is it not the policy and the contemplation of the California Fruit Agency to do business upon these lines in getting its fruit to the consumer, to send to the particular market so much of the product as it is advised by its agent in the given territory will be responsive to the demands of that market?

A. Probably that will be. I am not a member of the California Fruit Agency. I am not one of the directors, and of course I don't attend all the meetings and I don't know all about it.

Q. But as a matter of general information, that would be the impression?

A. As a matter of general information that would be the impression.

Q. I suppose, Mr. McLeod, since January, 1900, and while the routing has been controlled by the initial carrier, you have had no difficulty in learning, in the course of a day or two, the route upon which the given fruit would be carried, have you?

A. I think in most cases where we asked for it.

Q. In most of the cases. And even since the initial carrier has directed the routing, as a rule, with possible exceptions, but as
441 a rule, where diversions have been applied for they have been granted, haven't they?

A. Well, I have had one instance where the diverson entirely failed, where the car was sold; my own experience; that is, three years ago; I was shipping fruit individually at that time.

Q. I am not speaking, of course, of isolated instances, I am speaking——

A. I am speaking now of what may occur and does occur. I never had any trouble with either line before when it was on their car. I used to ship a good deal over the Southern Pacific, and I had no trouble whatever with the diversion. And here was a car that was taken over the Santa Fe and put on the Santa Fe and I sold it in transit, myself, by wire, to one of our customers, and I asked for the diversion of it, and the diversion order was lost somewhere between the Santa Fe office and Southern Pacific office here in this city and we never got our car diverted at all.

Q. I understand that situation perfectly.

A. And it made me a loss of about $300.

Q. It is not with reference to a situation of that kind, which of course might occur, that my question was put to you. But I want to know, generally speaking, since the initial carrier has directed the

routing, haven't the requests of the shipper for diversion been acceded to as a general rule?

A. As a general rule, I think they have, yes sir.

Q. Now, as I understand you, there have been occasions of your own experience—of course if you are speaking theoretically I
442 want you to say so; but I understand that within your own experience, where the Santa Fe had run out of their own refrigerator cars, they had loaded the product in Southern Pacific cars and those Southern Pacific cars had been sent over the Southern Pacific lines. Is that correct?

A. Yes sir. And I will say further that I knew of one instance where there were about anywhere from 150 to 300 cars—I don't know how many, but quite a good many of them—stowed away here at Lake View, about fifteen or twenty miles away from Riverside on the San Jacinto line, lying idle there, and we had to use Southern Pacific cars.

By Mr. CALL:

Q. What cars were stowed away there?

A. Why, the Santa Fe cars.

Q. Santa Fe cars?

A. Yes sir.

By Mr. DUNNE:

Q. You say that was a year ago?

A. Not this last winter, but the year before.

Q. That was one instance.

A. That was one instance.

Q. But I am speaking now of general facts, Mr. McLeod, as a matter of general conditions. When the Santa Fe loaded your product into the Southern Pacific cars, and sent those cars over the Southern Pacific lines, the case was this—at least as put to you—that the Santa Fe had run out of refrigerator cars and was using the Southern Pacific cars.

A. They simply told us to take the Southern Pacific cars. That was all there was to it.

Q. Was it a fact, in that connection, at least as put to you—of course I only want to get your knowledge of the subject—
443 that the Santa Fe had run out of their own refrigerator cars.

A. They said they did.

Q. Yes sir. That is what I want to understand.

A. That is all I know. And I have on several instances asked for a Southern Pacific car to ship to the city of San Francisco. I prefer the Southern Pacific cars to ship my local shipments. I never can get one. The Santa Fe refused me point blank to furnish a Southern Pacific car, but instead of that will give me a 36 footer of their own, mean, little cars, and I have to pile them up so that they get there half rotten. Now, that is what I object to.

Q. Well, I don't think that is particularly germane to the inquiry.

A. Perhaps it is not. But it is germane to our business.

Mr. DUNNE: I think that is all I want to ask Mr. McLeod.

By Mr. CALL:

Q. Speaking of that instance where these several hundred cars were on the side-tracks at Lake View, you say those were Santa Fe cars?

A. I am so informed, yes sir.

Q. And at that time the Santa Fe claimed to be out of cars and furnished you Southern Pacific cars?

A. Yes sir.

Q. To go over Southern Pacific lines?

A. Yes sir.

Mr. CALL: I just wanted to make that clear.

By Mr. NORTON:

Q. Now, Mr. McLeod, you stated that one car this year had
444 taken fifteen days to reach St. Louis, instead of seven.

A. Yes sir.

Q. Was that a shipment that you made?

A. The shipment was made through the agency, or through the Southern California Fruit Exchange. I don't remember now which one it was. It was one that was shipped there.

Q. Shipped under your directions?

A. Yes sir, over the Santa Fe line.

Q. Where was it consigned to originally?

A. St. Louis.

Q. And was it diverted to any point?

A. No sir.

Q. Was it held at any point?

A. Not that I know of. Not by us. It was not by our orders. It may have been held by the railroad. We didn't order it held. It was a sold car to go direct through.

Q. Do you know whether it might have been ordered by the agency held at some point?

A. No sir, it was not.

Q. It was not?

A. It was not. It was shipped for a special party in St. Louis.

Q. Over what route was that shipped?

A. Over the Santa Fe and Missouri Pacific, I think, if I remember right.

Q. Can you give me the number of your car?

A. Well, I cannot now.

Q. I wish you would bring it down.

A. Well, I shall not be here again unless I am forced to.
445 It is very hard for me to get away from home. I can send it to Mr. Call if he wishes it.

Q. I would like to have that.

A. The number of the car?

Q. Yes, the number of the car and the time of shipment.

A. Yes sir. I will look it up. If you will give me your address, I will send it to you.

Mr. NORTON: Well, send it here to the commissioner, Mr. Cates.

Mr. CALL: Yes.

By Mr. NORTON:

Q. Now, you stated also, on your direct examination, that since the routing has been taken in hand by the original carriers, that you have no idea of what the routing is to be?

A. We haven't, when we ship direct.

Q. Hasn't it been the practice of the initial carriers to ask you to state, when you send out the tramp car, through what cities you would like to have it go pending a sale?

A. They did so notify us two years ago.

Q. Well, hasn't that been the practice since?

A. Well, I can't say positively that it has.

Q. What proportion of the citrus fruit is sold after it leaves, that is, in tramp cars?

A. I could not answer that question.

Q. About how much?

A. I don't know.

Q. Well, can you make any estimate at all?

A. No, I can't, because the conditions vary so every month.
446 One month they sell practically very little, and next month the fruit arrives in bad order and it is hard to sell when it reaches destination.

Q. But it has been the practice and it is the practice to get the car on wheels?

A. Yes sir.

Q. And get the fruit started?

A. Yes sir.

Q. And be gaining time by having it under way and then selling it afterwards?

A. Yes sir; that has always been the practice.

Q. And are you prepared to say that ninety per cent. of the citrus fruit is not sold that way?

A. Certainly not.

Q. Is fifty per cent. of it sold that way?

A. I don't know definitely about that. I could not answer.

Q. But wherever a car—a tramp car is started out, you are given the privilege of naming the different cities between here and the point of destination you would like to have it go?

A. I think there was a circular issued to that effect about three years ago.

Q. Well, that has been the fact, hasn't it?

A. Possibly.

Q. Don't you know as a shipper?

A. Well, we have simply been billing it to destination.

Q. Haven't you sold tramp cars?

A. We have sold in transit, but we had the destination furnished us, Omaha, Kansas City, Argentine.

447 Q. Yes, or Boston or New York?

A. Yes sir.

Q. Every car, tramp car and every other car, has a fixed destination named?

A. Yes.

Q. Though that is fictitious as a matter of practice?

A. Yes sir.

Q. And then you name cities between here and Omaha, or between here and Boston, or between here and Chicago, through which you would like to have that car run, with a possibility of making a sale in the meantime?

A. Well, that is done now through the California Fruit Agency, and of course it does not reach me. I am simply one of the factors that make the agency.

Q. Well, you are not answering my question. I want to know if the railroad companies, the initial carriers, haven't permitted and requested you to do this, the shippers of citrus fruit?

A. They have permitted us to request such routes. They did that ever since the first—after the first month I think, when the routings were changed. After that they have said "If you will send in a separate slip and say you request such and such routings," generally they would give it to us. Some times they wouldn't.

Q. Well, they have requested you to name the cities through which you would like to have the cars go?

A. I think I have seen a circular to that effect, as I said some time ago. But I have never used it. So far as I am personally concerned it does not make any difference to me what cities it

448 goes through if the fruit is sold, unless I have an opportunity of selling it at some particular point.

Q. Well, that is neither here nor there. Answer the question. Now, this matter of controlling the routing is applied to all shippers alike, it is, by the carrier?

A. Well, all citrus shippers.

Q. That is what I mean.

A. Yes sir, I presume so.

Q. You have seen nothing to the contrary?

A. I have seen nothing to the contrary.

Q. So far as you understand, it is generally applied to all?

A. So far as I understand it is generally applied to all, at least, I don't know of anybody that is getting any special favors.

Q. Now, before this reservation of the right to route was made by those initial carriers, the defendants here, over what routes did you send your fruit to the East?

A. I have shipped them over various roads.

Q. Name them, some of them.

A. Well, for instance, Cleveland I always wanted to get it on the Nickel Plate.

Q. When it was consigned to Cleveland it was over the Nickel Plate?

A. Yes sir, always the Nickel Plate. We did that because the depot is close in town and the men didn't have to haul the fruit two miles. If it went over the Lake Shore they would have to
449 haul it about a mile and a half or two miles over rough streets.

Q. When going to Chicago what routes did you use?

A. Well, we used Santa Fe when we could, always.

Q. And when going to Boston?

A. Well, we didn't have any particular choice on lines, except that we get in on the Fitchburg, so as to get to the auction. That is the only thing.

Q. Well, after leaving Chicago?

A. After leaving Chicago we had no special choice.

Q. A shipment by way of Boston—is that what I asked you last?

A. Yes sir.

Q. How would it go from here?

A. It might go any way so as to reach Fitchburg road.

Q. You had no choice except the delivering road at Fitchburg?

A. At Fitchburg.

Q. You had no other choice in the meantime?

A. In the meantime, didn't have any special choice.

Q. Now, a shipment to St. Louis?

A. We always want that to come in on the Missouri Pacific.

Q. That is the delivering again?

A. That is the delivering line.

Q. The Missouri Pacific?

A. Yes sir.

Q. And no choice in the meanwhile?

A. No sir, except that we wanted that.

Q. Yes; no choice except as to the delivering of the car?

450 A. Just so as to get into the center of the city. That is what we were aiming for.

Q. Delivery is what you want?

A. Delivery is what we want; the quickest possible way.

Q. Then in the matter of routing, the point that you want to cover by having the right to route is that you would get the cars delivered as you want them?

A. Deliver them and get there expeditiously.

Q. But mainly for delivery?

A. Well, partly that, and part for expeditious shipment.

Q. Now, a shipment to Kansas City? How did you ship to Kansas City?

A. Over the Santa Fe.

Q. Direct.

A. Because it was the quickest route. It was only six days.

Q. A shipment to Omaha?

A. Well, we would either take the Southern Pacific or the Santa Fe. It didn't make a material difference.

Q. No choice?

A. Not very much, no.

Q. Well, what about the delivering carrier there?

A. Well, that question was not raised in that market.

Q. What route did you take to Buffalo?

A. Well, usually the Lake Shore.

Q. The Lake Shore was the delivering carrier?

A. Yes.

Q. Did you take the Lake Shore out of Chicago, Santa Fe to Chicago?

451 A. Santa Fe to Chicago, and I. I. I. and the Lake Shore.

Q. Well, you sometimes shipped over the Lake Shore and some times over the I. I. I.?

A. Well, the I. I. I. made the connections with the Santa Fe always. The Santa Fe never carry their cars into Chicago. When they ship them East they drop them off at Streator, Illinois, and send them by the I. I. I.

Q. They went, then by the I. I. I. and Lake Shore to Buffalo?

A. Yes, sir.

Q. And Detroit?

A. Well, we usually send them by the Lake Shore and sometimes by the Michigan Central. It doesn't make a material difference, so far as that is concerned, to us in our shipments. Didn't do much business in Detroit anyhow.

Q. Either one, either the Lake Shore or the Michigan Central would deliver at Detroit?

A. Yes, sir.

Q. To New York?

A. Erie. Erie delivery always.

Q. Erie delivery on shipments to New York?

A. Yes, sir.

Q. Now, at the present time what delivery do you get on shipments to New York?

A. We get Erie.

Q. The same thing?

A. Yes sir.

Q. What one do you get on shipments to Detroit?

A. Well, I don't know that there is a material difference
452 about that. I have not particularly noticed that.

Q. What one do you get on the shipments to Buffalo?

A. We get the Lake Shore, I suppose, as usual.

Q. The same as heretofore?
A. Yes sir.
Q. And shipments to St. Louis?
A. Get the Missouri Pacific.
Q. The same as you had before. And shipments to Boston?
A. We get Fitchburg delivery.
Q. The same as heretofore. And on shipments to Cleveland?
A. We get Nickel Plate.
Q. The same as you had before?
A. Yes sir.
Q. Then the reservation of the right to ship has not changed the condition that you consider desirable?
A. It makes a big difference in the time it gets there, though.
Q. Yes, but as to delivery, as you have the same delivery as you had before?
A. Yes sir, on request.
Q. On request?
A. Or, in other words, we have to ask for what is our right.
Q. Well, that is what we are trying out here. You don't know yet whether it is your right or not?
A. I thought the suit was decided that it was our right.
Q. No.
A. I am not a lawyer.

D. W. McLEOD.

Adjourned until 2 o'clock p. m.

453 The information as to the number of the car of D. W. McLeod's fruit delayed in transit, referred to on page 183 and which it was stipulated he should furnish by letter to the special examiner and commissioner, is as follows:

"Riverside Fruit Exchange, Calif.
Office.
Trade R. E. F. Mark.
John Jahn, Jr., Manager.
Telephone Main 1.
Riverside Fruit Exchange.
G. W. Garcelon,
President;
George Frost,
Vice-President;
S. H. Herrick,
Secretary.

Directors.
S. H. Herrick.
M. J. Daniels.
E. W. Holmes.
C. F. Marcy.
George Frost.
G. W. Garcelon.
J. E. Cutter.
W. P. Russell.
G. E. Bittinger.
A. P. Johnson.
C. H. Low.

RIVERSIDE, CALIFORNIA, Oct. 21st, 1903.

A. M. Cates, com'r, Los Angeles, Cal.

DEAR SIR: At the request of D. W. McLeod, mgr. Riverside Navel Orange Co. our records show that car S. F. R. D. 4011, shipped

from Pachappa station, Riverside, Cal. December 5th, 1902, billed to Southern California Fruit Exchange, St. Louis, Mo., via A. T. & S. F., and Mo. Pac. R. R. Arrived at Winslow Dec. 9th, East Las Vegas, Dec. 12th, set out at E. Las Vegas Dec. 12th, unable to haul.—Dec. 15th, St. Louis agent of So. Cal. Fr. Ec. reported overdue and not arrived—Dec'r 16th, arr. Argentine—Dec'r 19th, 8 a. m. arrived at St. Louis.

Yours very truly,

RIVERSIDE FRUIT EXCHANGE,
By JNO. JAHN, Jr., Mgr.

454 OCTOBER 19, 1903—2 o'clock p. m.

Mr. NORTON: I had one or two questions I wanted to ask Mr. McLeod, but I will not ask him any further questions.

A. G. STEARNS, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposed as follows:

Direct examination.

By Mr. CALL:

Q. State your full name, place of residence, and occupation.

A. A. G. Stearns, Highlands, San Bernardino county. Orange shipper, fruit shipper.

Q. What is the scope of your business as an orange grower and shipper?

A. I am not a grower at all. I am simply a shipper.

Q. You have a packing house?

A. Yes sir.

Q. Where is that?

A. Located at Highlands.

Q. On what railroad?

A. Santa Fe.

Q. Has the Southern Pacific a road there at Highlands?

A. No, it is only Santa Fe.

Q. To what extent do you ship citrus fruits?

A. Oh, from 225 to 300 cars a year.

455 Q. Are you familiar with the rule in operation by these railroads, defendants here, reserving to themselves the right to route citrus fruits over connecting lines?

A. Yes sir.

Q. And have been familiar with that regulation or rule since January, 1900, when it was put into force?

A. Yes sir.

Q. State, if you know, what the effect is of that rule or regulation of the initial carriers upon the citrus industry, and how it affects the shipper?

A. Well, it often works a hardship in the matter of routing a car, except you can get permission to rout- the car according to the order, in a business way of selling it f. o. b., California. For instance, a wire comes in from a dealer stating that he accepts your offer for a certain car of fruit, shipment at a certain time, via a certain route of delivery; and if we are unable to give him that delivery and you ship it, or if you don't know that you can give him that delivery and you accept the order and start the car out over some other line, you violate your contract with him, and if the market declines he is apt to make you trouble about it by demanding a rebate or rejecting the car altogether.

Q. What was the usual and average time that citrus fruit was in transmit from southern California to average eastern points prior to the routing regulation of January, 1900?

A. Well, I am not thoroughly familiar with that time. The time was generally quite satisfactory. We generally figured on about eight or nine days to Chicago and about eleven to fourteen days to New York and Boston.

456 Q. Well, how does that compare with the present time under the routing regulation?

A. Well, most of the time the last year or two has been *been* very slow.

Q. What time has it been made in usually?

A. Oh, we have had cars that were as much as eighteen and twenty days to New York, and we have had cars anywheres from twelve to fourteen days to Chicago.

Q. Well, what effect has that upon the fruit?

A. Well, it has a very bad effect on fruit this last year on account of its poor keeping quality. Every day's delay meant a great deal to it.

Q. Well, what is the operative effect of that routing regulation as to choice of routes to the East, as to some being better than others?

A. I don't know that that has worked any hardship to me personally. I have very little experience over the Southern Pacific, as they have two routes and mine has mostly gone Santa Fe. I understood, though, from our Redlands office that they had a good deal of trouble at times with the Southern Pacific wanting to force the cars via El Paso when they wanted to ship the northern route to save the icing, and they have refused to take them that way. But personally I know very little about it as I had no contact with him at all.

Q. Your packing house is on the Santa Fe?

A. My Highland packing house; the one I operate myself.

Q. Do you ship from the Highland packing house entirely over the Santa Fe?

A. No sir. At times—we have had orders that demand

457 Southern Pacific routing to certain points, and at times the Santa Fe has practically instructed us that our fruit must go Southern Pacific for a time.

Q. What excuse did they make for that?

A. No cars on the Santa Fe.

Q. Well, do you know whether that was a fact or not?

A. Oh, the side-track opposite our house was generally lined with Santa Fe cars at the time.

Q. And still they compelled you to take Southern Pacific refrigerator cars?

A. No, they didn't exactly compel us to. They put them in there and told us they were there for us to load out, and that they wouldn't set any Santa Fe's over there, and when we took it up and made a roar we got Santa Fe's. Just depend on how we—I remember a specific case that I took up, where I billed the car to a party and they refused to buy anything more from me if I shipped them Southern Pacific, stating that the time was so slow via Southern Pacific routes that they arrived in bad condition and didn't get the delivery they wanted, and they insisted that everything come Santa Fe. And I took the matter up with the Santa Fe and they issued an order that I get Santa Fe cars.

Q. And after that did you get them?

A. Yes, we got them right along after that.

Q. How much of your fruit has gone in that way over Southern Pacific that you wanted to go Santa Fe?

A. Well, no great amount.

Q. Several cars?

A. Oh yes, quite a number of cars. Probably we shipped
458 for a week or two at a time, but at that time of the year we were not so very particular about it, except in specific cases where they were ordered to go Santa Fe, although we always preferred to work Santa Fe out of our station for the reason that the Southern Pacific had no agent at Highland and if any difficulty came up or there was anything to look after it made a hardship on us to take it up with Los Angeles to find out about it, and it gave us much better facilities to work with the Santa Fe there.

Q. What effect does the routing rule have upon your ability to keep track of your fruit, as to where it is?

A. Well, in a good many cases where we don't get the routing of the cars and don't know where they go, we don't know anything about it. That applied more to cars shipped by the Southern Pacific than it did the Santa Fe, as the Santa Fe nearly always put their routing on the bill of lading and issued us the bill of lading the same day that the cars were shipped, or the next morning. The Southern Pacific didn't give us the routing until after the cars passed Colton, and through negligence on the part of the employees they often didn't get them to us at all. We have had a great many cars that we never knew the routing of.

Q. What other, if any, objections, do you have to the routing regulations?

A. Well, it is very hard, at times, for the railroad to know what we are going to load in the car or what routing the car should take

on account of the fruit that is in it. - For instance, we might have a certain sized lot of lemons or quality of lemons that are only
459 saleable through the South, through Texas or southern points. Yet if that car was routed for Ogden it would go into a market that didn't want that size or quality of fruit at all. And the same with any grade of fruit that you might pack. A shipper always has to know the route that it is going, and if he has not got it sold f. o. b., if he is tramping it out—I generally start my cars to Chicago. If I knew they went on the Santa Fe lines, I could work my markets through there. But if they go Southern Pacific and I didn't know they were going via El Paso, I had no idea which way they would go.

Q. The practice to allow diversions is universal, I believe?

A. Yes sir.

Q. And it is in connection with the diversions that makes it difficult to keep track of your fruit?

A. Our diversions have been very bad in the last year or two. I have a number of cases—I don't just recall the exact cars and circumstances to mind. I know we had a number of cases last winter where we lost the sale of cars by not being able to accomplish the diversion. And before that our diversions were taken up much more promptly than they are now. In fact we used to divert them from the other end a great deal.

Q. What effect, if any, has the routing regulation had upon competition over connecting carriers?

A. Never has been any competition that I know of since they took the routing.

Q. How about time? How has it affected the time in transit over the connecting lines?

460 A. I have no specific knowledge about the time on connecting lines. Never keep track of it.

Mr. CALL: That is all.

Cross-examination.

By Mr. DUNNE:

Q. Mr. Stearns, since the initial carriers direct the routing, as a general proposition the shipper has been made aware in a day or two, hasn't he, of the route selected?

A. I believe that is the custom, yes sir.

Q. Yes, and since the initial carrier directed the routing, as a general proposition diversions along the selected route have been freely permitted, have they not?

A. By taking it up with the initial carrier only.

Q. Exactly. But by so taking it up they have been freely allowed?

A. Yes sir. But that, even, caused delay in case you had a wire come in for a car and the car was near the diverting point. You took it up through this office, and they took it up with the connect-

ing line, and it would cause a delay; whereas, heretofore, we took it up direct with the line where the car was.

Q. Well, that delay is to be measured more or less by the actual circumstances of the case, as you have indicated?

A. Well, it has always caused a delay. Delay is caused; and in my case several cars got beyond the diverting point that could have been handled if they had been worked direct.

Q. But the actual facts of the case are, within a day or two it was the practice, if the shipper desired, that he should be made acquainted with the selected route. That is correct, is it?

461 A. Well, when we are moving fruit we generally have about all we can attend to without looking over all those cars every day to see whether they have reported the routings. In my case I have requested the Santa Fe agent at Highlands a number of times, "How about the routings on those cars on the Southern Pacific?" "Well, I have asked Colton for them for two days and can't get any reply."

Q. Well, I am not speaking now about the dereliction of employees?

A. Oh, I think the railroad wanted to give it to me.

Q. I am speaking now about the method of operation of initial carriers.

A. I don't think there is any question but that the general offices wanted to give us the routing promptly.

Q. That was the method of operation, was it not?

A. Yes sir.

By Mr. CALL:

Q. You mean to the shippers, after the freight had gone out, as to how it had gone?

A. Yes sir.

By Mr. DUNNE:

Q. Now, it was a farther situation, in that immediate connection, that diversions upon that route were freely permitted, was it not?

A. Yes sir, by taking it up with the initial carrier.

Q. Exactly. Now then, are you a member of the California Citrus Union?

A. Yes sir.

Q. How long have you been a member of that union?

A. Since the organization.

Mr. CALL: I want to reserve objections to this cross-exami-
462 nation on all legal grounds.

Mr. FLINT: You would be entitled to it under the stipulation.

Mr. CALL: Well, if that is understood.

By Mr. DUNNE:

Q. And it was organized about the 1st of April. You mean of the present year, do you?

A. Our business was taken over by the Citrus Union the 1st day of April, yes.

Q. Now then, a number of other shippers had their business taken over in like manner?

A. Yes sir.

Q. And then the distributing or selling agent through which the Citrus Union operated to reach the consumer, was the California Fruit Agency, was it not?

A. Yes sir.

Q. And a parallel situation was sustained by the California Fruit Agency towards the Southern California Fruit Exchange, was it not?

A. Yes sir.

Q. And these two associations, the California Citrus Union and the Southern California Fruit Exchange, comprehended almost all of the citrus fruit business in southern California, did they not, in the way of production and shipment?

A. Not in the way of production, because the Citrus Union people are not producers to any extent.

Q. Yes. I quite understand that. But the product, the oranges and lemons, the citrus fruits——

A. They would like to handle every box.

Q. Yes. But the idea was they should pass through these
463 associations?

A. If possible, yes sir.

Q. And taking these two associations and the California Fruit Agency, was not as much as ninety per cent. of the citrus fruit business of southern California comprehended within the operations of this association?

A. Well, I don't know exactly what you mean by that. That we anticipated getting that much, or that we did get it?

Q. Well, that you took over.

A. Oh no, we didn't take over that much business, because we didn't control that much by actual shipments, I don't think. At least, I don't know what the figures are.

Q. Well, you don't know. Very well.

A. I have no records showing just exactly what portion we did ship.

Q. At all events, the object of the Citrus Union and the Southern California Fruit Exchange was to consolidate the orange business and reach the consumer through a single distributing agency, the California Fruit Agency?

A. Yes sir.

Q. And the rate of charge for the commodity to the consumer was fixed, was it not, through that distributing agency?

A. No sir.
Q. How was it fixed?
A. Well, the rate of charge for what?
Q. For the commodity.
A. For what?
Q. To the consumer, for citrus fruits, for instance.
464 A. Do you mean the selling price of the fruit?
Q. To make myself entirely plain to you, the California Fruit Agency, in so far as it could do so consistent with the scheme of these associations, put their fruit into the market and sold it, did they not?
A. They put it on the market and sold it at the market price, yes sir.
Q. At the market price?
A. Yes sir.
Q. And who determined that market price in that operation?
A. That depended entirely on whether a fellow was buying a car f. o. b. from me or whether he bought the car delivered on the track, or whether he bought at auction. If he bought at auction it was what he wanted to pay.
Q. But where it was sold, who was it that you did business with? It was the California Fruit Agency, was it not?
A. Yes sir.
Q. In other words, when you turned over your business to the associations, the California Citrus Union, for instance, and through the California Citrus Union the fruit that you packed was put upon the market, you personally didn't put any price upon it, did you?
A. Well, I always had a say in the price that was made for my goods, if I could. I didn't allow some other fellow to dictate it.
Q. Well, when the goods were sold, they were sold by the California Fruit Agency?
465 A. Yes sir.
Q. And they transacted that business, did they not?
A. As my agents, yes sir.
Q. As your agents?
A. Yes sir.
Q. And as the agents of all other people who were in like circumstances with you, so far as the associations are concerned?
A. Yes sir.
Q. I understood you to say that you were not personally familiar with the time of service of these fruit shipments, Mr. Stearns?
A. Well, I have no data with me showing the particular time that was made on any particular cars. I didn't know that anything of that kind was coming up; was not asked to look up anything of the kind, and I could not remember.
Q. You are not able at this time from personal knowledge to give an instance, are you?
A. No. It is simply a matter of referring to the records, finding out what time a car made on any specific car.

Q. And, by the way, in connection with these routings, Mr. Stearns, since the initial carrier took hold of the direction of the routing, very generally hasn't the initial carrier allowed the shipper to suggest the routing? Hasn't that happened in very many instances?

A. Well, in most cases we always had the routing by asking for it, but that was a matter of a great deal of expense and detail in getting it, for the reason that no one in Highlands could give
466 me that routing, if it was contrary to the regular sheets or routings that the Santa Fe had there, and in almost every case I was compelled to call up over long distance 'phone Los Angeles and ask them what routing I could have, and explain why I wanted that routing, and go through a lot of detail that took time and money. There was the objection to it.

Q. There was some detail and there was some inconvenience. But when you overcame those inconveniences that you suggest and did reach the proper authority you usually got your own routing, did you not?

A. Not in all cases. We could not get it always.

Q. Well, in most cases, did you not?

A. In most cases.

Q. In most cases. And, in respect to the delivering line, where you sent on through shipments, you were alsost always allowed to suggest the delivering line, were you not?

A. Well, I don't know that we asked for that except it was—I don't know that I ever asked for a routing on any car except certain deliveries in New York at the auction, so as to have it delivered at the proper auction, or where the wire requested a delivery.

Q. Well, are you able to testify from your own personal experience as to whether in most instances and as a general rule the delivering line was accorded to the shipper?

A. In most cases I got the delivery line on my fruit, yes sir.

Mr. DUNNE: I think that is all.

467 By Mr. NORTON:

Q. You spoke, Mr. Stearns, in your direct examination, about certain buyers asking for a shipment and prescribing the route. I wish you would explain in what way they would be interested in doing that.

A. Well, take the case of Mr. Williams. I don't think they in any case specified the initial line. They always specified the delivery, in each case. Williams & Company of Omaha, with whom I did business for a great many years, they at one time got all their shipments via Burlington from Denver. For some reason that routing was cut out and our shipments were taken from Kansas City and back over some other line to Omaha, and it was very unsatisfactory to them. So much so that I lost a good deal of business from them, and we had a great deal of trouble about it. And I took it up with the Burlington a number of times and asked them

why they didn't arrange so that we could route that way, and finally it came about, after a couple of years, that we got notice to route that way.

Q. What had been the delivering line before?

A. The Burlington had been the delivering line when we first started with Mr. Williams.

Q. And the delivery was changed to what line?

A. I don't know the line. They were hauled into Kansas City by the Santa Fe and taken back to Omaha.

Q. Taken up to Omaha from Kansas City?

A. Yes sir.

Q. Well, taken from Kansas City to Omaha by the Burlington?

468 A. No. Another line.

Q. It had been taken from Kansas City originally——

A. No, taken via Denver.

Q. By way of Denver originally. And from Denver to Omaha on the Burlington; is that right?

A. Yes sir. All that Nebraska business that I had, a number of points there all preferred Burlington from Denver, and all specified it in their telegrams. And, in fact, Mr. Williams specified it in nearly every order, and we had to ignore it.

Q. They wanted it to go from Denver to Omaha by way of the Burlington rather than over the Santa Fe to Kansas City and then up?

A. Yes sir.

Q. Isn't it roundabout to go from the Santa Fe up to Denver to get on to the Burlington?

A. It is more direct, according to their—and made better time according to their say so.

Q. Well, as a geographical fact it is not so, is it?

A. Well, they made better time in some way and gave a great deal better satisfaction.

Q. How much difference in time did it make?

A. Well, I don't know. I have no specific record with me of the time. I know that we had lots of trouble about it, and more trouble to points west of Denver than we had to Denver points.

Q. What reasons, if any, did these buyers give for wanting the Missouri River business to go up by the Burlington?

A. Well, Mr. Williams said to me when I was in Omaha
469 that the Burlington people were personal friends of his and he did a great deal of business with them, and they gave him a good many accommodations on the delivery there that he didn't get from other lines, and that he thought they made better time and it made a better delivery point in Omaha for him. And we had several cases last year of deliveries to Iowa points where the same shipper would request a car a certain routing one time and another routing another time.

By Mr. DUNNE:

Q. While these gentlemen are consulting, will you allow me to ask you if under the arrangement since April, 1903, the California Fruit Agency has acted as shipper?

A. No sir, never with any of my cars.

Mr. CALL: Let me ask a question. What, approximately, is the percentage of citrus fruit business that is handled by the California Fruit Agency?

A. I think from 75 to 80 per cent.

By Mr. NORTON:

Q. Do you know whether in any of these shipments over the Burlington to Nebraska, Omaha, they were opened on the way, delivery made at intermediate places?

A. Not in the case of anything with Mr. Williams. He had no other point that he distributed.

Q. Well, in the case of anybody that you had any dealings with?

A. No sir, none in the Nebraska territory.

Q. Well, in any territory covered by the Burlington?

A. No, nothing that I know of. At least, I have no knowledge of it. I shipped to Mr. Johnson, to Lincoln, Nebraska, and I have no knowledge as to whether he cut up his cars anywhere at all
470 or not. My bills of lading went to him, and I got my money from him. In the case that I was speaking of, in Iowa points, I think they did. I think they had two or three branch houses and they preferred the routing of their cars as they wanted so that they could split them up.

Q. Well, in the shipping of the oranges, they are billed to you. You bill them to yourself?

A. Bill them to my order, yes sir.

Q. And the property in the oranges then remains in you. What right do you recognize in the purchaser to have anything to say about the routing?

A. Well, we don't consider, when we send a car of oranges to a man f. o. b., that they are our property, but we keep them in our control until they pay for them. Simply bill the car through to our order and notify him and draw on him, and when he takes up the draft he gets the bill of lading, and that constitutes his property.

Q. Not until he has paid for them?

A. Not until he has paid for them, no sir.

Q. Then he has no right to route your fruit?

A. Yes sir. If I make a contract with them that I will ship a car, or he orders a car from me, f. o. b., California, at a certain price, routed a certain line, and I ship them to him by some other line, I have violated part of the agreement in doing that.

Q. Do they ever make any request about the kind of equipment in which the shipments should be made?

A. Yes. I had one man that wired me never to ship another car

without I shipped it in one of the four thousand series Santa Fe's.

471 Q. Well, were there any other requests for equipment?

A. No, I don't know that I ever had any other.

Q. What line of cars ran on the Burlington?

A. I don't know a thing about that.

Q. Now, you spoke about a small grade of lemons that would go probably into a southern market, and mentioned the possibility of their being sent into a northern country by way of Ogden by the Southern Pacific. Would the Southern Pacific do that if you had told them what region of the country you would like to have your oranges go into, delivered to?

A. Well, they did route cars that way from Redlands, I understand from our people in Redlands that they were compelled to route cars via El Paso when they wanted them to go via Ogden, a contrary route.

Q. Well, was that on account of the fact that the fruit should have gone to a northern market and not to a southern?

A. They didn't consult us as to where we wanted the fruit to go at all. They simply said that the cars must be routed via El Paso at times.

Q. But the point I want to get at is whether you ever told them that you had fruit that should go to a southern market?

A. I don't know.

Q. And they persisted in sending it north?

A. I don't know enough of the details of it, because I don't have anything—while it was my business, I paid no attention to the details. The other boys handled it.

472 Q. Well, you gave that as a detailed example, that they would send by way of Ogden fruit that should go to a southern market?

A. No, I didn't state that they would do that. I said the railroads didn't know what the contents of a car was, and if they arbitrarily routed a car to Ogden a car of small size lemons that should go to a southern market, it would be a hardship on the shipper.

Q. If they did?

A. Yes sir.

Q. But you don't mean to say that they ever did that?

A. I don't mean to state that I ever had a case of that, no sir. The question was asked me in a general way as to what effect a shipment routed arbitrarily would have.

Q. What proportion of the orange and citrus shipments are sold in tramp cars?

A. Well, I don't know as to what proportion other shippers do.

Q. Well, state your own business?

Mr. CALL: What do you mean by "tramp cars"? Explain that.

Mr. NORTON: That has been explained.

The WITNESS: Cars that are started out——

Mr. DUNNE: A car that is routed to a fictitious destination.

Q. Is that a tramp car?

A. No. We start out cars, if we have no sale for them and are packing we simply start them out to Chicago or some such point and sell them en route.

473 Q. Well, that point is a fictitious designation, isn't it?

A. No more than any other car. We may be shipping a car to New York, and say, "Well, that car will go to New York at auction if it is not sold." That would not be a fictitious destination.

Mr. DUNNE: Relatively speaking, it would.

By Mr. NORTON:

Q. It may never go to the designated point?

A. No.

Q. Now, what proportion of your business has gone in tramp cars?

A. Oh, not over twenty five per cent., probably.

Q. And whenever you have sent a tramp car, has it not been the practice of the initial carrier to have you name what cities you would have it go through between here and the designated destination.

474 A. Never asked me anything about it.

Q. Did you ever do it?

A. No.

Q. How?

A. No.

Q. Did you ever want to do it, try to do it?

A. Why, I never cared to, no.

Q. Well, your company. Did any of your agents who handled the shipments?

A. No. We never stopped our cars at all. We let them go right through to Chicago, if they were tramped, and stopped them there.

Q. I know. If you start a car, say, for St. Louis, you may want to skirmish through two or three cities in the meantime where you may possibly sell it. Have you ever been denied the privilege of doing that?

A. Never asked for it, never cared anything about it.

Q. Was it not open to you to name those places through which you would request it to go?

A. I understood that it was.

Q. You stated that diversions, since 1900, are not so practical as they were before. What do you mean by that?

A. Well, I mean that before that time we routed our own cars, and if we wished to we took the diversion up direct with the road that was handling the car, or where the car was; while, since then, it is stamped on the bill of lading that we can only divert the car by permission of the initial line. We had a case, a very specific

case, of that, in which we were compelled to ship a car via
475 Southern Pacific on account of being no Santa Fe cars, and I sold the car and I sent a diversion order down to the depot by my bookkeeper, to the Santa Fe depot, as they were the initial line. And I went away, came to Los Angeles, and when I got down here I got a telephone stating that the Santa Fe agent refused to accept the diversion of the car as the car was being moved by the Southern Pacific, and that the proper thing for me to do was to file the diversion with the Southern Pacific railroad. I told them that I would absolutely refuse to do that, as they had no office in Highlands and I was not going to go to the expense of going to Redlands or San Bernardino to attend to it. I took it up with Mr. Chambers and he very promptly corrected it and said that the Santa Fe road was the proper party to divert the car. But in the meantime I was up against it for a couple of days there with a car moving forward.

Q. Well, what loss did you sustain on that car?

A. I don't remember whether I sustained any special loss on it or not, except the expense of telephone and annoyance and time and trouble that it took me. I could not tell, unless I would look up the case.

Q. Well, that is not the rule that you are giving now?

A. No, that is a specific case wherein the agent of the Santa Fe didn't know his business.

Q. Yes, and a rare case. Now, are all your employés thoroughly conversant with their business? Don't they make mistakes of a similar nature sometimes?

A. Well, I don't know about that, I am sure. I generally get after them pretty hard if they do.

Q. What other example of impracticability of diversion
476 have you besides the one you have mentioned?

A. Well, the only impracticability of it is, I think we should have the right to divert the car.

Q. You say that since the right of diversion has been retained by the initial carriers that it has not been as practical as it was before.

A. Well, you are not as close to your car, you are not as free to handle it, as you were before.

Q. As a matter of fact, are you not closer, when you can deal through the Southern Pacific or Santa Fe with a car on any foreign line?

A. No.

Q. Can't they get at a car quicker than you can?

A. No sir.

Q. Suppose your car has started to St. Louis and is on the San Francisco and St. Louis road, off of both of these initial lines; with whom would you deal if you wanted to divert it?

A. If I had time I should take it up with the Santa Fe, and if the time was close on the car, I should take it up direct with the agent of the St. Louis and San Francisco railway and have him wire at once.

Q. Who would he be?
A. The local agent here in Los Angeles.
Q. And suppose they don't have any here?
A. Then I would wire direct to the proper officer of the road.
Q. Who is he? Where would you find him?
A. Well, I would have to look it up and see where he was and who he was.
477 Q. You would take more time looking it up than you would letting the Santa Fe and Southern Pacific do it?
A. Oh no. We have that record right in the office, and it is only a matter of turning over the pages in the book.
Q. Name some specific cases in which you have been hindered or delayed in handling your fruit by not being permitted to deal directly with the connecting line?
A. We have had quite a number of cases where we have been unable to accomplish the diversion of the car because of the time consumed in handling the diversion and letting the car get by the diverting point.
Q. Didn't you ever let cars get by the diverting point when you were diverting them yourself?
A. Yes sir.
Q. So that it does not follow, then, that the retaining of the right to route is the cause of the car getting by the diverting point?
A. That is a question of good time on the part of the railroad.
Q. Yes. They made such speedy time that it got beyond your point. They were too quick for you?
A. They might do that.
Q. That was one of the times when they were not so slow. You stated that since the initial carrier has reserved the right to route, there has been no competition among connecting lines for your business. What do you mean by that?
A. Well, before the routing was put in the hands of the roads, we used to have a call once or twice a week from the representatives of the various lines, soliciting us to send our business over their
478 lines, and whenever we sold a car in a certain market we would get a wire from one of the railroads there asking us to make that delivery, that the man had requested it from them.
Q. What man?
A. The purchaser. And in a great many cases we got written orders from them, the railroads got written orders from the buyer, and sent them to us, wired that they had a written order on file for the routing of that car by their line. Since this matter came up, we haven't——
Q. These canvassers haven't been around.
A. No.
Q. What inducements did those canvassers for the connecting lines offer you for your shipments?
A. They have never offered me anything. Simply came around

and cultivated my acquaintance and told me what good things they would do for me.

Q. Yes. But they have not done anything since?

A. I have never seen a canvasser in Highlands in two years.

Mr. NORTON: That is all.

Mr. CALL: That is all. Will you waive the signature of Mr. Stearns?

Mr. NORTON: Yes.

Mr. DUNNE: Yes. There is something in the record that may be doubtful as to a question of date:

Q. Has the California Fruit Agency, since the organization, in April, 1903, actually marketed any citrus fruits?

A. Has the California Fruit Agency actually marketed any?

Q. Yes.

479 A. Oh yes.

Q. It has. But in marketing that fruit it would not necessarily follow that the California Fruit Agency was the shipper itself?

A. No, no.

Mr. DUNNE: Well, I ask you that, in order to throw some light upon an answer that you gave me to another question. That is all. Mr. Call, the suggestion has been made here that some of the questions that I asked Mr. Stearns may not be strictly cross-examination, and that if you put the objection in to them upon that ground it might be sustained. Will you stipulate that as to those questions he may be deemed my own witness, and that you may make any objections that are proper, so that I may not be under the necessity of bringing him back?

Mr. CALL: Yes. That is relating to the California Fruit Agency?

Mr. DUNNE: Yes sir.

Mr. CALL: Just take this. It is agreed that the examination of Mr. Stearns by defendants relating to the California Fruit Agency and the California Fruit Exchange shall be deemed to be evidence offered on the part of the defendants and not as cross-examination.

Mr. NORTON: And may not that include Mr. McLeod also?

Mr. CALL: Yes. And that this stipulation shall apply also to the evidence of D. W. McLeod.

Mr. NORTON: One further question, Mr. Stearns:

Q. You stated a while ago that you had to telephone Los Angeles and go to considerable other trouble to find out the locality of a car that had gone over the Southern Pacific.

480 A. I don't think I stated that.

Q. Well, it was when you wanted a certain delivery. Why did you not deal with the agent of the Santa Fe at your home place?

A. He always told me that he would simply take the matter up with the Southern Pacific, request when the car passed Colton that

they give it that routing, but he would not state that it would take that routing, and in order to close my deal with the buyer I had to know that it would take that routing. And in a great many cases I called up Mr. Ochiltree, with whom I am very well acquainted, and put the case to him; and he asked me all the why's and wherefore's and particulars of why I wanted it, and what the other fellow would do with it, and he would say finally, "I will look out for you, you telephone me the car and I will see that the car number is taken care of;" and then I had to telephone the car number when I shipped the car and call his attention to it.

Q. Well, couldn't you have got from the agent of the Santa Fe any information that you could have obtained here, direct? Are you on good terms with him?

A. Pretty good.

Q. Well, not so very good?

A. Yes, we have always got along all right, except that the agent of the Santa Fe at Highlands has always taken the position that it was none of his business to look after and he declined to take it up; that it was not his business.

Mr. NORTON: That is all.

The WITNESS: Never anything came up between him and I as to any friction on anything of that kind. It was the matter of his idea of doing things.

A. G. STEARNS.

481 GEORGE A. PARKYNS, recalled on behalf of the complainant, testified as follows:

Direct examination resumed.

By Mr. CALL:

Q. Have you produced the routing sheet showing percentage of cars and business sent over the lines connecting with the Southern Pacific?

A. I have not.

Q. Well, do you refuse to produce it?

A. After consulting my attorneys, they think it would not be wise for me to do so.

By Mr. DUNNE:

Q. Well, if you will permit me, we think it would not be competent evidence.

A. Would not be competent evidence to do so.

By Mr. CALL:

Q. Have they advised you not to produce it?

A. Yes sir.

Q. And therefore you refuse to produce it?

A. Yes sir.

Q. You have that routing table in your office?
A. Yes sir.
Q. And you could produce it if you wished to?
A. Yes sir.
Q. For what reason do you refuse to produce it?
A. I explained that my attorneys think it is not pertinent to the case.
Q. And that is the only reason?
A. That is the only reason I know of.

482 Mr. CALL: Well, Mr. Examiner, I will ask you to certify this testimony and demand for this evidence, to the court, for action by the court.

The EXAMINER: Very well.

Mr. DUNNE: You will make an application to the court for an order?

Mr. CALL: Yes, I will present it to the circuit court.

Q. At the end of the shipping season of citrus fruits, after you had endeavored to carry out the routing instructions from the general freight office, what report, if any, did you make concerning that?
A. I make no report.
Q. Is it not customary to make a report to the Santa Fe Railway Company?
A. No sir.
Q. Do you make a report to the connecting lines?
A. No sir.
Q. You make a report to the headquarters?
A. I make a report of all business whatever in my territory weekly to the general office.
Q. And you will show in that report at the end of the year just what percentage has gone by each route, I suppose?
A. I show the number of cars going by each route.
Q. Well, do you carry out those instructions concerning the routing?
A. As nearly as practicable.
Q. Well, what result do you get? Do you approximately get the results required by the routing instructions?
A. Yes.

483 Q. Have you a copy in your office of the east-bound joint tariff of class and commodity rates effective November 15th, 1899?
A. I probably have. I could not say.
Q. Well, you can get a copy of that, cannot you?
A. Yes.
Q. Well, will you do so?
A. Yes.
Q. And furnish it to the examiner?
A. Yes sir. What is that tariff again?

Q. It is the east-bound joint tariff of class and commodity rates, effective November 15th, 1899. Now, have you in your custody and control the joint tariff of January 18th, 1900, as to citrus fruits?

A. Well, I don't suppose I have a spare copy. I have no doubt I have one in my official file.

Q. Well, can you get a copy and furnish it?

A. Yes. What is that date, again?

Q. January 18th, 1900. That, I understand, is a citrus fruit tariff.

A. There is a citrus fruit tariff. Whether this is the date or not I don't know.

Q. I think this is the one. Have you a copy of the present joint tariff, effective at this time?

A. Yes.

Q. On class and commodity rates, east-bound?

A. Yes.

Q. Well, will you furnish a copy of that?

A. Yes.

Q. Please do so. And also, the present tariff on citrus fruits.

A. Yes sir.

484 Mr. CALL: And when they are produced, I will ask the examiner to mark them "Complainant's Exhibit 1, 2, 3 and 4," respectively.

485 Q. The through rate by the joint tariff applies to all territory, I believe, east of the Sierra Nevada mountains practically?

A. Practically all territory, yes.

Q. And the rate is called a flat rate of a dollar and a quarter a hundred?

A. Yes.

Q. That is divided up among the different lines over whose roads the freight passes?

A. Yes.

Q. According to a schedule which is fixed in the joint tariff?

A. No, the schedule is not fixed in the joint tariff. That is a matter of arrangement between the different lines in interest.

Q. That is not in a tariff filed with the commission?

A. No, it is not in a tariff. I don't think the division sheets are filed with the commission.

Q. What do you call them?

A. Division sheets.

Q. Well, I thought I had seen them.

A. It may be. But I don't think they are.

Q. I wish you would also furnish the division sheets showing——

A. Well, I have not those.

Q. Well, you can get a copy of it? They are printed?

Mr. DUNNE: Unless the relevancy of this testimony is indicated by

you, as at present advised, I think I should instruct him not to produce the division sheets. I don't see the bearing upon the issue.

486 Mr. CALL: Well, I will request the witness to produce the division sheets. I would like to have them produced, if they are in his custody and control.

The WITNESS: They are not.

Mr. DUNNE: As at present advised, I shall advise the witness not to produce it.

The EXAMINER: Well, the witness testifies that this special document is not in his custody.

The WITNESS: Yes.

By Mr. CALL:

Q. How does the through joint tariff on citrus fruit compare in amount as to the sum of the rates over the various roads entering into it?

A. Oh, very much less. You mean the local rates?

Q. Yes, over these lines.

A. Very much less.

Q. Well, about how much less?

A. Well, it would simply be guesswork on my part. I couldn't tell you.

Q. But the sum of the local rates, that is, the rates over these lines entering into the through haul, would greatly exceed the through joint rate?

A. Yes sir.

Mr. CALL: That is all at present.

Cross-examination.

By Mr. DUNNE:

Q. Mr. Parkyns, with reference to the percentage sheet to which Mr. Call directed your attention, the sheet of percentage distributions among the connecting carriers, so far as you know if you do

487 know anything upon the subject, are those percentages matters to which the connecting carriers are privy, either by arrangement among themselves or by arrangements between them collectively and your initial company, or any of them individually and your initial company?

A. My understanding is that they are not.

Q. So far as you know, are they matters upon which the initial carrier acts upon its exclusive initiative?

A. Yes.

Mr. DUNNE: That is all.

Mr. NORTON: That is all, I think.

Redirect examination.

By Mr. CALL:

Q. I understood you to say that you yourself didn't arrange these percentages?

A. No sir.

Q. They are sent to you from the general freight office?

A. Yes sir.

Q. Then you know nothing about the arrangements with the connecting lines?

A. No sir.

Q. As to percentages?

A. No sir; only as they are given to me.

Q. Yes, as they are furnished to you by the general freight office?

A. Yes sir.

Mr. CALL: That is all at present.

Mr. DUNNE: That is all, Mr. Parkyns.

G. A. PARKYNS.

488 JAMES A. EVEREST, a witness produced on behalf of the complainant, being first duly cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct examination.

By Mr. CALL:

Q. What is your name and residence and occupation?

A. James Arthur Everest. Reside in Riverside. My occupation I am a grower and shipper of oranges, as secretary and manager of the Everest rancho.

Q. How many oranges do you ship, ordinarily, in a season.

A. Anywhere from 50 to 75 carloads.

Q. What lines of road is your packing house on?

A. On the Santa Fe only.

Q. Are you familiar with the rule or regulation put in force by these defendant railroads by which they undertake to reserve to themselves the right to route and control the routing of citrus fruit over connecting lines?

A. I know that they reserve that right to themselves, yes sir.

Q. You have been familiar with that regulation since it was put in force in 1900?

A. Since it was put in force, yes sir.

Q. Well, state if you know what effect that regulation has upon the citrus fruit industry and the shipping and handling of citrus fruit?

A. Well, the only way that I could come to a conclusion, as to th
effect upon our particular business or upon the citrus industr
489 as a whole, would be by a comparison of the service and th
time that obtained prior to the time that that ruling wen
into effect and at the present time. Years ago, before the routin
was taken by the railroads we used to have quick service, full i
formation as to our shipments, and a time to Chicago that was muc
shorter than at the present. Certainly every day that the car is e
route is causing, directly or indirectly, a loss to us through decay o
deterioration of the fruit.

Q. What effect does it have upon competition among connectin
lines?

A. As far as I can see, there is no competition whatever. Prio
to the establishment of that rule we used to have agents from east
ern connections of the Santa Fe and Southern Pacific call upon u
and urging us to ship fruit over their lines; promised us that i
case we would do so they would see the fruit was hurried to desti
nation, and proper attention to ventilation and so forth.

Q. What effect does the regulation have upon the other com
modities as compared to citrus fruit?

A. Do you mean as regards west-bound traffic?

Q. Yes, east-bound or west-bound.

A. Well, I know that in cases of some west-bound freight tha
that competition still exists; that, to my knowledge, being interested
in a business that requires occasional carload shipments of pianos
when we are about to arrange for a shipment, the agents for differ
ent lines call on us, or call on our manager, and promise him cer
tain privileges in the way of loading East, and quick time over thei
roads, if he will let them bring the shipment to this coast
490 It would seem to me that if we could have the same thing
for oranges that it would be a benefit to us, if nothing more
than quick time, and quick time is an absolute necessity to us i
our business.

Q. What effect does the regulation have upon the ability of the
shipper to control the marketing of his fruit and to ascertain the
whereabouts of it?

A. In former times we used to have some information in the way
of telegrams and in the way of postal cards, I think, that we sent
out from Los Angeles, informing us when the cars passed certain
terminal points. We knew with some degree of accuracy as to
where that car was. At the present time we know, or at least I
have been able to find out, nothing about the car; in fact, don't
know at the time that I am contemplating diversion whether I am
going to catch the car or not. And it is impossible to find out any-
thing as to the location of the car, where it is. Such has been my
experience.

Q. What has been the effect of this routing regulation upon the
time in transit of citrus fruits?

A. The time is much slower.

Q. Much slower than it was before the rule went into effect?

A. Very much slower. We used to get six or seven days, frequently, to Chicago; more often six than seven. Now it is very often twelve. I have had cars 18 and 22 days to New York, where we used to get, as I remember it, about eleven.

Q. Well, state what effect the routing regulation has upon your ability to get cars over the Santa Fe or other roads during the shipping season?

491 A. Well, at times it is very hard to get any kind of cars. At certain other times it is impossible to get anything but S. P. cars to load.

Q. Well, what road do you prefer to ship over?

A. I must prefer to ship over the Santa Fe.

Q. Well, do you always get all the Santa Fe cars you need?

A. No sir.

Q. What do you do in that case?

A. I either wait until I can get a Santa Fe, or allow the car to go to the S. P.

Q. Who furnishes those cars to go to the Southern Pacific?

A. The agent in Riverside of the Santa Fe.

Q. He furnishes Southern Pacific cars and sends them out over the Southern Pacific?

A. Sends them out over the Southern Pacific, against my wishes.

Q. What proportion, do you suppose, of your cars go over Southern Pacific against your wishes in that way?

A. It is pretty hard to arrive at any proportion. I don't think any very large proportion of them the last two or three years.

Q. Some number of cars?

A. Yes; several cars.

Q. Since the routing rule went into effect?

A. Yes. But I had such poor luck with the first two cars that I was compelled to ship S. P., that I preferred to wait two or three days and hold my fruit in the packing house and ship Santa Fe. So I have not loaded very many S. P. cars.

492 Mr. CALL: That is all.

Cross-examination.

By Mr. DUNNE:

Q. Mr. Everest, did these connecting carriers, prior to the time when the railroads assumed direction of the routing, pay you any rebates?

A. No sir.

Q. Now then, after the railroad companies had assumed control of the routing, the initial companies, as a general proposition you would know in a day or two the route that your car was taking, would you not?

A. Why, when I put in my bill of lading, when I obtained my bill of lading, as a general rule the routing was in the bill of lading

Q. Yes. And the company, so far as that routing was concerned, allowed you freely to divert, did it not, as a general rule?

A. I have had very little trouble so far as diversions is concerned.

Mr. DUNNE: I think that is all.

By Mr. NORTON:

Q. Mr. Everest, in your direct examination you mentioned that as a direct result of that reservation of the right to route by the initial carriers that there was a loss of speed. You say that quick time is a necessity?

A. Yes sir, I say that quick time is a necessity.

Q. I wish you would explain how the retaining of the routing by the initial carries increases time?

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A. How it reduces time?

Q. Yes.

A. Well, so far as my observation has been it has not reduced the time.

Q. Well, I mean slows the time.

A. Well, I am not well enough informed of the workings of the railroad department to know. All I suspect is that where there is competition among connecting lines they will make an extra effort, as in any competitive business, to make quick time.

Q. Where has this time been lost? On the initial lines or on connecting lines?

A. Not being informed as to when my car has passed certain points, I could not tell.

Q. Then you don't know whether lack of competition among connecting lines has caused delay?

A. I don't know for certain. I know delay has been occasioned.

Q. Well, and you charge the delay to be because of the reservation by the initial carrier of the right to route?

A. It appears to me that that is one of the causes.

Q. It is merely an appearance; you know nothing about it?

A. I know nothing positive. All I can say is what the facts were, and the result.

Q. But what the cause of the effect was you are not prepared to say.

A. I could not say positively, no.

Q. Now, who sent these postal cards informing you of the movements of cars before the right of routing was reserved?

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A. They were sent, as I remember it, by several different railroads.

Q. Were they sent by railroads or car companies?

A. I know I had some by railroads, and some by car companies, as well as I remember it.

Q. Well, from what points were they sent?

A. Several different points. I know I would get them from Sac-

ramento, and would get them from Ogden, and used to get them from, occasionally, El Paso, I believe.

Q. You got them from each new company that took the car? When the car passed to a new company, that company notified you that it received your car; is that it?

A. As it passed this point. As I say, I can't say for certain what company issued those cards. I believe I have some of them on file now.

Q. You say at the present time you don't know whether you can catch a car on diversion when you want to divert them?

A. Not for certain, no sir.

Q. Did you always catch them for certain before?

A. Oh, it was always a little uncertain.

Q. It was as uncertain before the right to route was reserved as it is now was it not?

A. Well, I could not say for certain; because, until the last few years I have done very little diverting. Most of ours has been direct shipments.

Q. But have you had any trouble since January, 1900, with your diversions?

A. In only a few cases.

495 Q. Not more than might be expected under the circumstances?

A. Yes, but as I said——

Q. No matter who might be routing?

A. Yes, but as I say, we do comparatively little diverting.

Q. Well, how soon after a car leaves here would you want to know the routing of it? How soon after a car leaves southern California would you want to know the routing of it?

A. You mean if the railroad company reserves the routing?

Q. Yes, when the railroad company routes it.

A. I would like to know in a couple of days.

Q. Well, how soon is it necessary for you to know in your business?

A. Well, in the course of two or three days.

Q. Well, have you ever been longer than that without the knowledge, if you asked for it and wanted it?

A. I have always had the knowledge as to the routing.

Q. You have always had the knowledge as to the routing?

A. I have had very little trouble on that score.

Q. Now, you stated on cross examination in answer to a question by Mr. Dunne that you had never received any rebates. Did you ever have an offer of any, or any intimation that you could get them?

A. I had an intimation that I could obtain them.

Q. You had an intimation that you could obtain them from who?

A. Not a railroad man. A party that would work the

496 scheme for me.

Q. Well, I don't mean to ask you who made this intima-

tion, but from whom would the rebates come that were coming if they should come?

A. I took it that it was from the railroad and from the car companies.

Q. The eastern connections and the car companies?

A. I don't know whether it was the eastern connections or the initial lines. I didn't know for sure at that time. In fact, I didn't investigate it because we had fully determined not to take the rebates.

Q. Well, did you know of any getting rebates?

A. I knew that a great many were getting rebates.

Q. Did you know from whom they were getting them?

A. From the railroad companies and from the car companies.

Q. Well, did you know they were getting any from the railroad companies, or from the car companies? Which ones?

A. Not for a certainty I knew either, except from hearsay.

Q. You had no knowledge, then, on the subject?

A. Not absolutely, no sir.

Q. What railroad companies were talked of; eastern connections?

A. I believe some, and I believe that the Santa Fe and S. P. both were talked of at that time. But that is absolutely all hearsay. I know nothing about it.

Mr. NORTON: That is all, I think.

Mr. DUNNE: That is all.

Mr. CALL: That is all.

497 By Mr. DUNNE:

Q. Are you a member of the California Citrus Union or the Southern California Fruit Exchange?

A. No, sir.

Q. You are not connected with those?

A. I am not connected with those. We ship nothing but our own fruit. We have a hundred acres of navel oranges and we ship our own fruit.

Q. You go it alone. Is that the idea?

A. We go it alone. But we want the very best time we can have to Chicago and all the other points. That is what worries me. I don't want any rebates, and I don't want any special concession, particularly; but I want good time and good service, and that we haven't got.

A. J. EVEREST.

498 W. G. BARNWELL, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Direct examination.

By Mr. CALL:

Q. What is your name?
A. W. G. Barnwell.
Q. And your residence?
A. Los Angeles.
Q. And what is your occupation?
A. Assistant general freight agent of all lines west of Albuquerque for the Santa Fe system.
Q. What is the scope of your business and occupation in that connection?
A. Assistant to the general freight agent in charge of traffic matters on the coast.
Q. Do you or do you not have control of the routing of freight over lines beyond the connecting lines?
A. You mean personally?
Q. I mean personally or through your office.
A. Through our office we do, of stuff going over our own line.
Q. Who determines, of the officers of the Santa Fe railroad, what lines any given freight shall go over beyond your terminals?
A. Its general officers.
Q. What general officer?
499 A. Freight traffic manager, the assistant traffic manager and the general freight agent. Possibly the second vice-president. That I am not sure of.
Q. Who issues the instructions?
A. To whom?
Q. In regard to that.
A. To the agents?
Q. To the agents.
A. The general freight agent.
Q. How often are those instructions issued?
A. Once a year.
Q. At what time of the year?
A. At the beginning of the shipping season.
Q. Do those percentages vary with different years, or is it the same each year?
A. Oh, the instructions go out to the agent approximately about the same, but the amount of business varies. We work as close to those percentages as we can.
Q. And in order to carry out those instructions, you have to instruct your local agents from time to time to slightly vary those general percentages.

A. I don't recall that we have had to do that, sir.

Q. And at the end of the season you compile the reports or prepare a report to show exactly what went over each connecting line, do you not?

A. No. As a matter of information we prepare that every month.

Q. Every month?

A. Yes sir.

500 Q. From month to month?

A. From month to month.

Q. And you only send instructions to the local agents once a year?

A. About once a year, yes sir. General instructions.

Q. Who issues those instructions?

A. General freight agent.

Q. Have you a copy of the instructions sent that cover the shipments during the season just closing?

A. Yes sir, there is a file in the office.

Q. Will you produce that table for the examiner?

A. As the general freight agent has been subpœnaed to appear before your examiner, and is in direct charge of the office, I would request that you ask that question of him, as he is in charge of the office. I don't mean that as a refusal to do that, only I am not authorized by the company to give anything out of the office.

Q. How long have you been in your present employment?

A. My present position?

Q. Yes sir.

A. About two years; a little over two years.

Q. And have you the instructions issued for the season prior to the present year?

A. I think so, sir.

Q. And for the season prior to that?

A. I think it began with 1900, and those instructions were submitted as an exhibit in the testimony taken, I think, in 1900, and I think the present instructions are identical.

Mr. CALL: Yes. I think that is all.

501 Mr. DUNNE: Have you any questions?

Mr. NORTON: No.

Mr. DUNNE: I have no questions.

Mr. CALL: When this is run off, you can examine that, Mr. Barnwell, and swear to that deposition.

W. G. BARNWELL.

Mr. CALL: Under the stipulation made concerning the introduction in evidence in this case of part of the testimony taken in the proceedings before the Interstate Commerce Commission, I offer in evidence:

(15.) So much of that evidence as commences with the testimony of William Sproule, at page 497, in the volume of evidence taken before the commission in 1903, and ending at page 527.

The testimony last offered is as follows:

502 Afternoon Session, 2 p. m.

WILLIAM SPROULE, a witness produced before the commissioner, having been first duly sworn, testified as follows:

Direct examination.

By Mr. CALL:

Q. What is your name?
A. William Sproule.
Q. Your residence?
A. San Francisco.
Q. And your occupation?
A. Freight traffic manager of the Southern Pacific Company's lines west of Ogden and El Paso and south of Portland.
Q. State what lines of railroad that covers?
A. That covers the line from El Paso to San Francisco, and its branches; Ogden to San Francisco over what was formerly known as the Central Pacific, and Portland to San Francisco with all branches in California, and the branches in Oregon.
Q. Did you mention the line from San Francisco to El Paso via Los Angeles?
A. Yes sir.
Q. And which includes the line from San Francisco to Sacramento to connect with the Central Pacific?
A. All the lines operated by the Southern Pacific Company west of El Paso, Texas, or Ogden, Utah, or south of Portland, Oregon.

503 Mr. BURKS: Are those the lines known as the Pacific system?
A. Pacific system and Oregon lines.

By Mr. CALL:

Q. You say you are traffic manager?
A. Known as freight traffic manager.
Q. Freight traffic manager covering those lines. Now, the Southern Pacific Company which is mentioned in this proceeding as a party defendant, is a corporation organized under the laws of Kentucky, is it not?
A. Yes.
Q. Under what plan or system does the Southern Pacific Company operate the Central Pacific?
A. It operates it as part of the Southern Pacific Company's Pacific system lines generally.
Q. Does it own that line or operate it under a lease?
A. Well, as I understand it, the Southern Pacific Company is a holding company, and that all these lines are leased by it, whether the Southern Pacific Railroad of New Mexico, Southern Pacific Railroad of Arizona, Southern Pacific Railroad of California, or what was formerly known as the Central Pacific.

Q. The Southern Pacific Company then, of Kentucky has a lease and operates a set of Pacific railroads under a lease?

A. As to the technical question of whether it is or is not a lease, I am not informed.

Mr. HERRIN: It is a lease, Mr. Call.

Mr. CALL: I know it is a lease, but I didn't want to volunteer that statement.

The WITNESS: I understand it is a lease.

Mr. CALL: It is a lease made in 1885. I wish you would
504 produce and furnish a copy of that lease by the Central Pacific Railroad Company to the Southern Pacific Company.

The COMMISSIONER: I don't suppose Mr. Sproule could do that.

The WITNESS: I am not the custodian of those papers and could not do it.

Mr. CALL: Will you furnish it, Mr. Herrin?

Mr. HERRIN: Yes.

Mr. CALL: I would like a copy of that, as well as a copy of the lease in 1885.

Mr. HERRIN: You want a copy of the lease in existence now. You don't care about the lease that was formerly held by the Southern Pacific Company?

Mr. CALL: I want the present lease and the present lease from the Southern Pacific Railroad Company to the Southern Pacific Company covering the lines of the Southern Pacific Company. If the lease of 1885 has been modified and you will show what modifications have been made by supplemental leases, and if they have been wholly superseded, why, then I want the existing leases.

Q. The lines of the Southern Pacific Railway Company extend from Los Angeles to San Francisco and from Los Angeles east to the eastern boundary of this State, do they not?

A. Yes, sir. That is the Southern Pacific Railroad of California.

Q. The Southern Pacific Railroad of California, and to a connection at Sacramento with the Central Pacific lines?

A. Yes, sir.

Q. Or at Lathrop, I have forgotten which, and the Central
505 Pacific extends from there to Ogden.

A. Well, Goshen in the San Joaquin valley and at Sacramento also, Sacramento by the way of Ogden.

Q. And the Central Pacific extends from there east to Ogden?

A. Yes, sir.

Q. Have you furnished and prepared a copy of the paper that we requested the number of fruit cars shipped over the Southern Pacific lines?

A. Yes, sir. (Witness hands a paper to Mr. Call.)

The COMMISSIONER: Those are the number of carloads of fruit shipped out?

A. That is a statement of the citrus fruit shipments from southern California to eastern points via Southern Pacific lines by calendar

months for five past seasons consecutively and the current season to April 1st, 1903, showing the total shipments moved over Southern Pacific lines, and those moving under ventilation and refrigeration.

The COMMISSIONER: It won't take but a minute to put that into the record, and perhaps we had better have you read those.

A. They are as follows:

Season of 1897–1898:

	November	253 cars
	December	663 "
	January	1060 "
	February	1022 "
	March	995 "
	April	1184 "
	May	689 "
506	June	591 "
	July	201 "
	August	158 "
	September	62 "
	October	62 "
	Total	7040

Under ventilation, 5542; under refrigeration, 1498.

Season of 1898–1899:

	November	25 carloads.
	December	771 "
	January	889 "
	February	929 "
	March	932 "
	April	564 "
	May	345 "
	June	73 "
	July	28 "
	August	29 "
	September	23 "
	October	3 "
	Total	4611

Under ventilation, 4112; under refrigeration, 499.

Season of 1899–1900:

	November	51 carloads.
	December	635 "
	January	1236 "
	February	1190 "
	March	1793 "
	April	1332 "

507	May	890	carloads.
	June	521	"
	July	156	"
	August	131	"
	September	77	"
	October	41	"
	Total	8053	"

Under ventilation 5376; under refrigeration 2677.

Season of 1900–1901:

November	156
December	1136
January	1421
February	1600
March	1997
April	1938
May	959
June	800
July	395
August	147
September	59
October	78
Total	10686

Under ventilation 6080; under refrigeration 4606.

Season of 1901–1902:

	November	169
	December	793
	January	1300
	February	1636
	March	1298
508	April	1436
	May	611
	June	545
	July	142
	August	90
	September	63
	October	53
	Total	8136

Under ventilation 5289; under refrigeration, 2847, total, 8,136.

Season of 1902–1903:

November	60
December	610
January	1143
February	1336
March	1536
Total for the five months	4685

Under ventilation 4351; under refrigeration 334.

I would say that the figures showing the number of cars that went forward under refrigeration are furnished me by the Armour car lines, as they attend to the icing.

By Mr. CALL:

Q. Do those amounts embrace all of the cars of citrus fruits that have gone out over your lines from the territory south of Tehachapi?

A. Yes, sir; to all eastern points, that is points east of the Rocky mountains.

Q. For those years. And no other cars of citrus fruits have gone out over your lines other than these named here, the amounts you specify?

509 A. Not to points east of the Rocky mountains. Of course there are quite a number of other cars that go to western points that are not embraced here, or embraced, as I understand it, in the subject under discussion. There is Washington, Idaho, Montana, Utah, and western Colorado, Arizona, and New Mexico.

Q. That are not embraced in this?

A. The scattering cars that go into the western territory.

Mr. CALL: I would like to ask Mr. Chambers if the schedule you gave us embraces all cars that went out, or only cars to points east of the Rocky mountains.

Mr. CHAMBERS: To points east of the Rocky mountains.

Mr. CALL: Does the Southern Pacific own its own refrigerator cars?

A. No sir.

Q. Who do they belong to?

A. We have a contract with the Armour Car Line for the supply of refrigerator cars.

Q. Is the Armour Car Line a corporation?

A. Yes, I so understand.

Q. And you contract with that company to furnish you refrigerator cars?

A. Yes, we have a contract for all the cars we need up to five thousand.

Q. And you call upon them from time to time for cars?

A. Yes.

Q. Have you got the contract with them with you?

A. No.

510 Q. You may furnish that later.

The COMMISSIONER: That may be in the case already.

Mr. HERRIN: No, it is since we took the testimony the last time.

Mr. CALL: That may be desirable.

Mr. HERRIN: We will furnish a copy.

A. I intended to have it here, but I can send for it and get it in the course of the afternoon.

Mr. HERRIN: You can hand it to the reporter tonight after we get through.

By Mr. CALL:

Q. Do you transport over the Southern Pacific lines any other cars than the Armour cars? Fruit cars of course, I refer to?

A. Those are the only ones we use in the fruit business, the orange traffic.

Q. Those are the only ones you furnish?

A. Yes, unless we run out of cars and can borrow some from the Santa Fe.

Q. You sometimes transport Santa Fe cars?

A. Yes.

Q. How many Santa Fe cars have you transported during the present season in that way?

A. I doubt whether there has been any during the present season.

Q. Can you say how many you obtained that way last year?

A. I think very few. I should suppose perhaps it didn't exceed a few dozen, an insignificant number, because we didn't run out of cars.

Q. How does the Southern Pacific mileage in the citrus
511 fruit belt compare with the Santa Fe mileage?

A. We have 354 miles, and they have, as we figure it, 328.

Q. Who among the officers of the Southern Pacific Company determines the number of fruit cars to be ordered?

A. I do.

Q. And you order under the Armour contract from time to time what you need?

A. Yes sir.

Mr. CALL: Now, Mr. Commissioner, I would like to offer in evidence at this time the testimony of Mr. J. C. Stubbs, taken in the case or in the matter entitled Consolidations and combinations of carriers subject to the act to regulate commerce, including the method of association known as the community of interest plan, testimony taken in January, 1902, and such parts of the testimony of Mr. Stubbs taken there as I will now read. The original testimony of Mr. Stubbs in this hearing is on file before the Interstate Commerce Commission as a public record, and I will read from a

copy printed by authority of law, a Government publication, such parts of it as I wish to offer.

Mr. BURKS: An objection is made to that testimony, that it does not relate to the issue involved in this hearing.

The COMMISSIONER: If it is admissible at all it is admissible as a declaration by Mr. Stubbs as an officer of the Southern Pacific Company.

Mr. HERRIN: Of course he has no right to submit anything but what is relevant to this matter.

Mr. CALL: State, if you please Mr. Sproule, what Mr. J. C.
512 Stubbs' official position is.

A. He is third vice-president of the Southern Pacific Company.

Mr. CALL: I will now read this:

"Mr. DAY: What is your official relation to the Union or Southern Pacific systems?

Mr. STUBBS: My title is traffic director.

Mr. DAY: Of what?

Mr. STUBBS: Of both the Southern Pacific and Union Pacific.

Mr. DAY: Both systems. How long have you held that position?

Mr. STUBBS: Since about July.

Mr. DAY: Prior to that, what was your relation to the railroad service?

Mr. STUBBS: I was one of the vice presidents of the Southern Pacific Company prior to taking the present position.

Mr. DAY: You had been traffic manager of that system for how long?

Mr. STUBBS: Oh practically for twenty years—probably seventeen years the traffic manager, but connected with the traffic department for thirty years.

Mr. DAY: Who appointed you traffic director of those two systems?

Mr. STUBBS: I suppose it was done by a vote of the boards. I do not know. All my relation to the subject was with Mr. E. H. Harriman, chairman of the board.

Mr. DAY: Chairman of what board?

Mr. STUBBS: Chairman of the board of directors of the
513 Southern Pacific and chairman of the board of directors of the Union Pacific at the time.

Mr. DAY: What instructions or advices were given you respecting your future duties by Mr. Harriman or any one else?

Mr. STUBBS: I have no instructions except the general one that I was to have the supervision of the traffic of those lines subject to his instruction from time to time. That, perhaps, expresses it fully.

* * * * * * *

Mr. DAY: Will you tell the commission what instructions were given you by Mr. Harriman respecting the functions you have exercised? State it as fully as you can.

Mr. STUBBS: I think the statement I made descriptive of my understanding of my duties probably gives as full and definite a statement as I could make. I suppose a great deal of my work is taken as a matter of course,—precedent and established usage. I cannot recall that I have ever had specific instructions from any officer. I am supposed to go about my business and attend to it and if there is any doubt what is to be done, the proprieties as to any particular matter, I am supposed to refer it to the chairman of the board and ask his advice.

* * * * * * *

Mr. DAY: Has the Southern Pacific or Union Pacific traffic management or companies any agreement, either in writing or otherwise, respecting a division of the Pacific Coast traffic or any part of it with any other lines?

Mr. STUBBS: I think not.

Mr. DAY: Any arrangement between your companies, the
514 systems you represent, and the Atchison, Topeka and Santa Fe?

Mr. STUBBS: Simply the general arrangement that we will consult and agree upon rates.

Mr. DAY: Nothing regarding the percentage of traffic which each shall have?

A Mr. STUBBS: No.

Mr. DAY: Nothing on coal?

Mr. STUBBS: No.

Mr. DAY: Nor oil?

Mr. STUBBS: No.

Mr. DAY: Nor sugar?

Mr. STUBBS: No.

Mr. DAY: Nor tea?

Mr. STUBBS: No.

Mr. DAY: Nor regarding fruit?

Mr. STUBBS: There is an understanding, but it is not in writing,—you might say it amounts to an understanding that so far as the orange business is concerned we will endeavor to work an equal division of that traffic. That arises from the fact that it is about so divided in its production on our local lines in California. There is about 50 per cent. of that produced on the lines owned by the Santa Fe, and about 50 per cent. produced on the Southern Pacific, and so far as possible we agree that we shall not interfere with each other's local business.

Mr. DAY: How was that effected? What is the understanding that you will or will not do?

Mr. STUBBS: It is simply an understanding that we will main-
tain the rates, will not cut rates. There are no coercive
515 measures to force the business on one line or the other.

Mr. DAY: It is the agreement that you will not cut the published rates, or will not lower the published rates by lawful rates?

Mr. STUBBS: Practically to maintain the lawful rates.

Mr DAY: Is it agreed that you will not reduce the rates?

Mr. STUBBS: Without consultation. That is practically the understanding. There is no writing about it.

Mr. DAY: How long has that understanding been in effect?

Mr. STUBBS: Oh, for perhaps three years.

Mr. DAY: Who was it made between?

Mr. STUBBS: Mr. Morton and Mr. Stubbs.

Mr. DAY: Where was it made?

Mr. STUBBS: I do not know whether it was made in San Francisco, or New York, or Chicago, I cannot recall.

Mr. DAY: What was said?

Mr. STUBBS: I cannot say any more than it was embraced in that fact. It was agreed that each line would leave to each line the product on its lines locally at an equality of rates."

Mr. DAY: Is there not an understanding regarding the percentage of the Trans-Pacific traffic that the Atchison shall have or take?

Mr. HERRIN: I will reserve objections and object to anything else except that concerning this traffic.

The COMMISSIONER: This fruit traffic?

Mr. HERRIN: Yes, the fruit traffic.

Mr. CALL: I was referring to the fruit traffic.

Mr. HERRIN: Trans-Pacific is another subject entirely.

516 The COMMISSIONER: I think unless there is something which tends to show an agreement in regard to this citrus fruit.

Mr. CALL: There is a reference to the citrus fruit business in that connection, I think.

Mr. HERRIN: Mr. Stubbs testified on that subject in Washington, in this case, and if you will read all his testimony together you will see it is harmonious.

Mr. CALL: I will read this:

"Mr. DAY: I have heard it said, Mr. Stubbs, that there was an agreement between the Southern Pacific and the Atchison, Topeka and Santa Fe, or between the Union Pacific and the Atchison, Topeka and Santa Fe, or an understanding by which percentages of the traffic was apportioned one to the other, and that it was agreed as nearly as could be that those percentages should be carried out in the actual division of traffic. Is there anything in that?

"Mr. STUBBS: Well, I have answered as to oranges.

* * * * * * *

"Commissioner PROUTY: And you have the power, if it is of sufficient consequence, to make every rate on either of those lines, subject to Mr. Harriman?

"Mr. STUBBS: Subject to Mr. Harriman, yes, sir.

"Commissioner PROUTY: You have the power to compel every agent to maintain rates on those two lines, have you not?

Mr. STUBBS: Subject to Mr. Harriman's instructions; yes, sir.

Commissioner PROUTY: If you think it best that those two lines should advance the rate, you have the power to advance the rate on both lines, by both routes, at the same time?

517 Mr. STUBBS: It might be so said.

Commissioner PROUTY: So you reserve the right to make the eastbound rates from the Pacific coast?

Mr. STUBBS: No sir.

Commissioner PROUTY: Don't you insist upon the right, so far as your connections are concerned, to name the east-bound rates from the Pacific coats?

Mr. STUBBS: No sir.

Commissioner PROUTY: How are those rates made?

Mr. STUBBS: Rates are made by agreement between connecting lines and by agreement between competing lines. If the proposition—to give it to you in detail as I understand it—if the proposition or if the rate from San Francisco, say to New York, is advanced by the Santa Fe or by the Southern Pacific, or by any line, it will be sent to Mr. Countiss, the joint agent, and if it is agreeable to all he will put it in. If it is not agreeable to all, then the proponent of the rate must give him notice that he wants the rate put in anyway, and he will put it in."

Mr. HERRIN: What place is that you are reading from?

Mr. CALL: I was reading from page 31, and commencing on page 20 of the publication.

Q. What is the custom and practice of the Southern Pacific Railroad Company as to the interchange of freight cars generally with other roads? Do you exchange freight cars?

A. Generally. There are exceptions to that.

Q. What is the custom in that respect as to fruit cars?

A. As to refrigerators?

Q. Yes sir.

A. We don't interchange.

Mr. HERRIN: Don't you interchange at all?

A. Fruit refrigerators, that is, we don't, if you mean their fruit refrigerators against our fruit refrigerators.

518 Mr. CALL: That is what I am referring to.

A. No, we don't interchange because we have a special arrangement for the fruit business, an equipment which is necessary, and which they have not. They rely on us for the equipment.

Q. To the best of your knowledge, and information, has there been any payment of any rebates or drawbacks, or any other bonus given by any railroad company for the transportation of fruit to any shippers within the last three years?

A. Since the first of January, 1900, no, there has not been any to my knowledge.

Q. Have any such rates been paid indirectly?

A. Not to my knowledge.

Q. I would say have any such rebates been paid indirectly

A. I don't believe there have.

Q. The testimony has shown that the time of fruit cars in transit between California and eastern points has been longer during the past year than in former years. How do you account for that, or isn't that true?

A. On some shipments that is true. The time last year was not up to standard. While a great many cars did get through on time, a great many others did not. That was because of congested conditions in the traffic of the country generally. The congestion occurred chiefly east of our rails, and although the time made was not the time that we would wish that fruit had been given, and that we aimed to give, it was the best that could be obtained under the traffic conditions that prevailed in the country at the time of movement, and was better than the time made on any other class
519 of freight. In other words, the oranges during their movement last season, even under those conditions, received preferred attention.

Q. To what extent have claims for damages been made by shippers against your company during the present season for delay in transit or for any other damage to fruit en route?

A. The present season?

Q. Yes.

A. None that I know of.

Q. How was it last season?

A. About $3000.00.

Q. You paid about $3000.00 damages?

A. Yes.

Q. How was it the season before?

A. The season before we paid about $28,000.00 I think. I can tell you the amount—$32,000.00 for the season 1900-1901. That was when the wave of prosperity first struck the country and congested all the traffic.

Q. What amount of damages did you pay during 1899-1900?

A. Very little. I don't know the amount, but it was very small.

Q. The damages then commenced largely to accrue after the 1st of January, 1900?

A. Yes, sir. No, no—the 1st of November; the season beginning the 1st of November, 1900.

Q. Yes, that season commencing the 1st of November, 1900.

A. In other words, it was for movement in 1901.

Q. What amount did you state was the amount of damage paid for the season?

520 A. $32,000.00.

Q. Of 1900. That is from November, 1900, to November, 1901?

A. $32,000.00.

Q. And how much did you say from November, 1899, to November, 1900?

A. I don't remember, but it was very small.

Q. At what date did your company put into force the rul regulation reserving to itself the right to route the freight bey its own lines?

A. January 1st, 1900. Prior to that time we reserved the righ route, but on that day we assumed the right to route.

Q. Did you enforce it on that day?

A. Yes sir.

Q. January 1st, 1900?

A. January 1st, 1900.

Q. Prior to that date there had been very little claim for d ages?

A. Yes, the shippers routed the shipment.

Q. For damages to fruit in transit?

A. The shippers routed prior to that, and if there was any cl made it was made against the line that was responsible for the lay.

Mr. HERRIN: It didn't trouble you any?

A. No, unless the delay was on our rails.

By Mr. CALL:

Q. Under the present arrangements you have a contract by wh you are not responsible for damages on connecting lin
521 Isn't that condition in all your shipping contracts?

A. There is a condition, but not a condition of that ch acter.

Q. Have you a copy of your bill of lading?

A. I haven't got it with me, but I can get one readily. There a general clause that is usual to all bills of lading, that is, that un those bills of lading the carrier restricts its liability to the line— damage that may occur upon his own rails.

Q. That is what I am referring to. So that you would not ho yourself liable for damages on a connecting line anyhow?

A. We might not hold ourselves, but unhappily that does n hold with the shipper.

Q. Do you pay damages on connecting lines?

A. We are competing with a line that has its own rails from L Angeles to Chicago. If they are liable for a loss they will pay Consequently, if we take a shipment from Los Angeles to Chicag the shipper does not rest under the answer from us that this lo occurred east of El Paso or Ogden and he must look to that lin The competitive condition is what causes us to pay it, even if th delays did not occur on our line.

Q. Notwithstanding the clause in the contract that you are n liable for loss on connecting lines, you do pay some damages?

A. Not only on fruit; on all freight. Then we collect from th road responsible.

By Mr. HERRIN:

522 Q. Instead of turning shippers over to the connecting lines you settle with them?

A. We have to. They would not route the business our way if we didn't.

By Mr. CALL:

Q. It does not come out of your company, though?

A. Not if the loss did not come out of our road. But as long as we have routed the freight, the shipper claims that we should collect the indebtedness from the company on whose rails the loss occurred; and we have recognized that logic on the part of the shipper, in addition to the competitive necessity for doing it.

Mr. HERRIN: Here is a copy of this contract. I would like to have the reporter copy it in the record and return us the copy. Said contract is as follows:

Memorandum of agreement entered into this 10th day of October, 1902, between the Southern Pacific Company (Pacific system), a corporation of Kentucky, hereinafter designated as the railway, and Armour Car Lines, a corporation of New Jersey hereinafter designated as the car line, witnesseth:

Whereas, the railway is in need of ventilator refrigerator cars for transporting shipments of fruits, vegetables, etc., from the Pacific coast to eastern points, and

Whereas, the car line has a large number of such ventilator-refrigerator cars suitable for this traffic:

Now therefore, in consideration of the benefits mutually to accrue, and for the purpose of securing to the public the latest improved and suitable ventilator-refrigerator equipment, it is hereby agreed and understood:

1. Citrus Fruit, Vegetables, and Deciduous Fruit from South-
523 ern California and Sonora Railway Points.

The car line agrees to furnish, as the demands of the business may require, such cars, from time to time, not to exceed five thousand (5000) ventilator-refrigerators of the latest improved pattern, equal to the best, and not less than eighty (80) per cent. of which cars are to be forty (40) foot long and the balance not less than thirty-six (36) foot long, suitable for the transportation of citrus fruit, vegetables (including cantaloupes but not including potatoes and onions), and deciduous fresh fruit originating in southern California at points south of Mojave and Elwood and points on the Sonora railway, destined to points east of and including El Paso, Deming, Ogden, and Portland.

2. Deciduous Fruit, Citrus Fruit, Apples, Vegetables, and Salmon from Northern California.

The car line agrees to furnish all the cars necessary for shipments of deciduous fresh fruit, citrus fruit, apples, vegetables (not including potatoes and onions), and fresh or pickled salmon originating at points in California north of Mojave and Elwood destined to points east of and including El Paso, Deming, Ogden, and Portland; said cars to be ventilator-refrigerator cars of the latest improved pattern, equal to the best, not less than eighty (80) per cent. of which to be forty (40) *foot* in length and the balance not less than thirty-six (36) *foot* long, suitable for the transportation of the above described commodities.

3. The use of said cars to be open on equal terms to all shippers who make requisition upon the railway for cars necessary
524 from time to time, the distribution of said cars to be performed by the railway, who shall have the option of determining at what junction said railway will deliver the loaded cars to connecting line and over what road or roads the cars shall move to destination. With respect to the distribution of cars for loading there shall be such co-operation between the railway and the car line as shall promote mutual economies without impairing the efficiency of the service rendered the public, to the end that the railway shall not have to render unnecessary service or the car line furnish unnecessary equipment.

4. Said cars to be equipped with automatic air brakes and Master Car Builders' couplers, and to be in these and all other respects suitable for safe transportation over all the standard *guage* lines of the railway.

5. Car line agrees to provide ice when necessary for refrigeration of contents of said cars at point of shipment and in transit to destination, and agrees to be responsible to shippers or consignees for proper and adequate refrigeration and to hold the railway harmless from loss and damage to contents of cars arising from improper or inadequate refrigeration. The car line to charge shippers or consignees reasonable compensation for the refrigerating service either by having such charges billed as advance charges by the railway for car line's account or by making drafts on shippers or consignees therefor.

Car line to provide natural ice at all points north of and including Bakersfield, with the understanding that if there are interior shipping stations at which car line deems it unwise to establish
525 icing station, it is agreed in order that use of natural ice may not be burdensome upon car line that on such cars as it is necessary in regular course of business contemplated herein to ice at nearest regular icing station of car line said ice in tanks of cars iced at such icing station will be hauled by railway to fruit loading point at the difference between the freight rate on ice from mountains

to such icing station and freight rate from mountains to fruit loading point, charge in no case to be less than two dollars and fifty cents ($2.50) per car.

6. Car line agrees to keep the interior of cars and all parts pertaining to refrigeration in proper condition without cost to the railway, the railway supplying free of charge suitable track room where necessary cleaning and repairing of cars can be done.

7. Labor and expense incident to refrigeration of said cars, aside from train and ordinary switching service, waybilling, and collection of charges, to be done at the expense of the car line.

8. The car line agrees to protect the railway from any loss or damage caused from defects or improper refrigerating portions of car, and also to hold the railway harmless from damages or expenses of litigation by reason of use in said cars of any combination or device which may be claimed to be an infringement of any patented device owned by any other person or corporation.

9. If because of some unfor-seen emergency resulting in car shortage it becomes necessary at any time for the railway to furnish cars which are by it obtainable from other sources to meet the
526 emergency, then the car line agrees to refrigerate such cars without prejudice same as it does its own at same charge per car which it makes in the case of its own cars. Car line agrees to pay the railway whatever amount said cars obtained to meet such emergency may cost the railway in excess of what would have been the cost to the railway if car line had furnished the necessary cars.

10. It is understood firm names, trade marks, and the like shall not be placed on cars; this not to be construed as forbidding posters of shipper or consignee which can be readily removed.

11. The railway agrees to pay the car line and the car line agrees to accept for the use of said cars mileage as follows:

On Citrus Fruit, Vegetables, and Deciduous Fruit from Southern California and Sonora Railway Points.

Eastbound.—On cars loaded with citrus fruit, vegetables, and decisuous fruit from points in California south of Mojave and Elwood, or from points on Sonora railway, six-tenths (6/10) of one cent per car per mile for movement over the railroads of the Southern Pacific Company (Pacific system).

Westbound.—Six-tenths (6/10) of one cent per car per mile when cars are delivered with loads to the Southern Pacific Company at Ogden, El Paso, Deming, or Portland. No mileage to be paid on empty cars; the Southern Pacific Company to have the privilege of loading cars at or west of its eastern junctions if it desires to do so.

On Oranges, Apples, Vegetables, and Salmon from Northern California.

Eastbound.—On cars loaded with oranges, apples, vege-
527 tables, and salmon from points in California north of Mojave and Elwood, six-tenths (6/10) of one cent per car per mile for movement over its rails.

Westbound.—Six-tenths (6 / 10) of one cent per mile when cars are delivered with loads to the Southern Pacific Company at Ogden, El Paso, Deming, or Portland. No mileage to be paid on empty cars; the Southern Pacific Company to have the privilege of loading cars at or west of its eastern junctions if it desires to do so.

On Deciduous Fruit from Northern California.

Eastbound.—No mileage to be paid loaded or empty.

Westbound.—Six-tenths (6 / 10) of one cent per car per mile when cars are delivered with loads to the Southern Pacific Company at Ogden, El Paso, Deming, or Portland. No mileage to be paid on empty cars; the Southern Pacific Company to have the privilege of loading cars at or west of its eastern junctions if it desires to do so.

The railway shall not load any such cars with ice or other bulk commodities likely to injure such cars or impair their usefulness for the special purpose for which they are intended as aforesaid.

12. The railway agrees and obligates itself, during the term of this contract, to use the car line's equipment exclusively in the movement of fruits, vegetables, apples and salmon, as hereinbefore described, from points on the railway's lines in California and Sonora to points east of or via El Paso, Deming, Ogden, and Portland, provided the car line supplies sufficient equipment to properly care for the business.

528 13. The railway agrees to furnish free transportation for six (6) representatives of the car lines regularly and exclusively engaged in supervising the business herein described.

14. In event of general labor troubles which make it impossible to obtain movement of cars in sufficient number or with sufficient dispatch to furnish at junction points cars necessary to protect the traffic hereinbefore described, then and in that case the railway will take cognizance of such disability of the car line in construing the terms of this agreement.

15. Should competition or other causes result in the demoralization of refrigerator rates on shipments hereinbefore described, the parties hereto agree jointly to provide ways and means for meeting such competition in so far as may be necessary to protect their mutual interests.

16. It is mutually agreed that in case of wilful or continued default by either party to observe the obligations of this agreement, such default of one party resulting in loss to the other party, the party so in default shall fully indemnify the aggrieved party or in event of failure so to do, said aggrieved party shall have the option of terminating this agreement on thirty days' notice.

Cars for Southern Pacific Company's Local Service.

17. The car line agrees to lease to the railway (at the railway's option to be declared within six months from date

of this agreement), on fifteen (15) days' notice from the railway one hundred (100) thirty-six (36) foot ventilator-refrigerator cars for use in the local service of the railway at a
529 rental of ten dollars ($10.00) per car per month for the balance of the term of this agreement, said rental to apply from date on which cars are delivered at the points hereinafter designated until their return to the car line at points so designated, payable at the office of the car line in Chicago on the first of each month for the month second preceding, or fraction thereof, during which said cars may be in the railway's service. The car line agrees to deliver said cars in good condition at Chicago, Kansas City, Omaha, Los Angeles, or Sacramento, at its option, within thirty (30) days after the expiration of said fifteen (15) days' notice.

18. The car line further agrees to lease to the railway (at the railway's option, to be declared within one year from date of this agreement), on fifteen (15) days' notice from the railway, two hundred (200) additional thirty-six (36) foot ventilator-refrigerator cars, or any part thereof, at the rate of not less than one hundred (100) cars monthly, beginning at expiration of said fifteen days' notice, for use in the local service of the railway, for the balance of the term of this agreement, at the same rental and terms of payment as hereinbefore provided.

19. Said leased cars to be painted and lettered in the name of the railway, as directed by its officers, at car line's expense.

20. The railway has the right to use said leased cars in its local service on all classes of suitable freight, either with or without ice, and to handle and have control over them in all respects as it does its own equipment, save and excepting that said cars are not
530 to be used in the fruit and vegetable business as hereinbefore described destined to points east of El Paso, Deming, Ogden, or Portland, for which cars are provided in the first part of this agreement. Said cars may be used for bananas, potatoes, and onions whether through or local.

21. The railway agrees to return said leased cars on the expiration of this lease to the car line at its shops at Chicago, Kansas City, or Omaha, at the railway's option, same to be repainted at the expiration of the lease by the car line at car line's expense.

22. Mileage or per diem from foreign lines for said leased cars to be reported to and returned by the railway.

23. The railway agrees to maintain said leased cars as to repairs, keep them in good order in all respects, and return them to the car line at the expiration of lease in good order, less ordinary wear and tear.

24. The railway agrees that the lessor is the owner of said leased cars, and further agrees that whenever in the judgment of the car line it may be necessary for the protection of its property and ownership in said cars to indicate such ownership by attaching a plate to said cars, or otherwise compatible with the intent and meaning of this contract, the said lessor to have the right to do so.

25. In the event that any of said leased cars are destroyed by the railway, or otherwise, the railway agrees to notify the car line, who is to bill therefor and receive settlement from the railway destroying, under Master Car Builders' rules; rental of cars so destroyed to cease from date of such destruction.

531 26. In the event of shortage of cars to be furnished by the car line, covered by first part of this agreement, for shipments of fruits and vegetables for points east of the gate ways, the railway shall temporarily transfer these leased cars to the car line for such period as may be necessary, provided same can be spared for such period by the railway from its local service. Railway to be released from its obligations as lessee during such period.

27. This agreement shall be binding on the successors or assigns of either the railway or the car line.

28. This agreement to be in effect from and after November first, 1902, for three years from that date, and thereafter until cancelled by either party on and after having giving six months' written notice of an election to cancel same.

SOUTHERN PACIFIC COMPANY
(PACIFIC SYSTEM),
Per J. C. STUBBS, Third Vice President.
ARMOUR CAR LINES,
Per J. OGDEN ARMOUR, President.

O K.
C. B. ROBBINS, F. W. B.

O K.
W. SPROULE.

532 E. M. NADAL, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct examination.

By Mr. CALL:

Q. What is your name?
A. E. M. Nadal.
Q. What is your residence?
A. Los Angeles, at present.
Q. What is your present occupation?
A. I am engaged in handling traffic matters for different shippers; principally orange shippers.
Q. What was your occupation from 1896 to 1901?
A. I was in the employ of the Southern Pacific Railroad Company at Chicago under W. G. Neimyer, general western agent.
Q. What was the scope of that employment?

A. Well, that of general clerk, up until 1900. Rates, principally——

By Mr. DUNNE:

Q. What did you say?
A. General office man up until 1900.

By Mr. CALL:

Q. When did that employment commence?
A. What employment?
Q. In Chicago, in the Southern Pacific Company?
A. January 1st, 1896.
Q. And when did you leave there?
A. I left there at the time of the consolidation of the U. P. and S. P.

Q. What has been your employment since that?

533 A. Been in the orange business, selling and shipping department of Ruddock, Trench Company, up to the formation of the California Fruit Agency. I was connected with them up until the 1st of August.

Q. Were you with the Southern Pacific from January, 1896, to September 1901?

A. Yes sir; from 1900 up until 1901, two seasons of the orange traffic, I handled their orange business, from that office, diversions, claims and such things.

Q. The business of that office was to make diversions, was it, and present claims?

A. To make diversions for account of the different shippers; route them over the different lines.

Q. Anything else?

A. Well, I handled their claims on the orange traffic, on all traffic that passed through that office.

Q. What was the practice and custom, if you know, of the Southern Pacific Company, during your employment there, concerning the division of business over lines connecting with the Southern Pacific, of citrus fruit business?

A. Well, I have understood the initial line got fifty per cent. of the business, and the fifty per cent. that went to the Southern Pacific was distributed according to a percentage table issued by the Southern Pacific that we followed.

Q. This percentage table was a table showing the percentages awarded to each connecting line?

A. Yes sir.

Q. Who, if you know, prepared and made up that percentage table?

534 A. I think it was signed by G. W. Luce at that time assistant general freight agent at Los Angeles.

Q. And in the course of the business what did they do with it?

How did they handle those percentage tables to put them into effect and carry them out?

A. Well, they would allot to—for instance, east of Chicago they would take the lines between Chicago and Buffalo, and certain periods of the year they would give each of them ten per cent. of the business. It would vary. Sometimes they would get twenty per cent.

Q. Well, who had charge of this actual diversion of the business, and control of it, over the connecting lines?

A. The Southern Pacific Company.

Q. Well, what agents?

A. W. G. Neimyer handled what business passed through his office.

Q. Did he control the routing over the connecting lines?

A. Yes sir; absolutely. Could not divert a car without passing through his hands, or his office; that is, except what was diverted from the Los Angeles office, Southern Pacific.

Q. I am referring particularly, not so much to diversions en route as to the routing over connecting lines. Who controlled the routing over the connecting lines?

A. The Southern Pacific, for shipments billed by them.

Q. Through its local agents?

A. Through its local agents and general agents. At that time there were only two channels for diversions; that was Los Angeles and Chicago.

Mr. DUNNE: I don't think he means "diversion" in the
535 sense in which we have been using it, Mr. Call, in that answer. Do you? You have been asking him about the distribution of the business.

Mr. CALL: Yes. I think he didn't understand it.

Q. I was inquiring as to the division of the cars and of the business over connecting lines beyond the Southern Pacific's lines, as to how that business was divided among connecting lines, and who divided it.

A. Those two offices divided all the business that was handled by the Southern Pacific, under the same percentage table.

Q. Under these percentage tables?

A. Yes sir. Mr. Luce sent a copy to Mr. Seyler at that time, and a copy to Mr. Neimyer of the same percentage table.

Q. Who was Mr. Seyler?

A. He was then local agent of the Southern Pacific Company.

Q. Where?

A. Here.

Q. At Los Angeles?

A. Yes sir.

Q. Well, now, can you state what those percentages were allowed to those connecting lines in any year? Say, in 1901?

A. I have a sort of an abstract here that I can give you an idea of it by.

Q. Well, state what those percentages were.

Mr. DUNNE: Well, the witness appears to be testifying from a memorandum, Mr. Call. As I understand it, he is about to testify from a memorandum. I suppose we are entitled to inquire
536 as to when that memorandum was made.

Mr. CALL: Yes.

Q. You can state when that memorandum was made?

A. Well the original memorandum was made from a copy of the percentage table that I used at Chicago, as I just spoke about.

Q. Made by you yourself?

A. This was made by me; taken from the percentage table issued by Mr. Luce that I mentioned.

Q. Well, now, state, if you know, what those percentages were.

By Mr. DUNNE:

Q. You are testifying now from a copy.

A. Testifying from a memorandum taken from the original, yes sir.

Q. From a copy that you made of the original while you were in the Southern Pacific Company?

A. Yes sir.

By Mr. CALL:

Q. Proceed.

Mr. DUNNE: Of course we shall object to that as incompetent, and not the best evidence.

Mr. CALL: Well, you have reserved your objections.

A. This was the percentage table of date May 27th, 1901; south of Mojave, deduct non-competitive business, Santa Fe, Union Pacific, Rio Grande Western, Texas Pacific, Southern Pacific and Atlantic system. The balance via Ogden, 90 per cent.; El Paso route, 10 per cent. Via Ogden, proportion it gets the U. P., gets 70 per cent.; the Rio Grande Western 30 per cent. Of the U. P. proportion, give the Chicago & Northwestern 45 per cent., Illinois Central, 40 per cent., C. M. & St. P., 15 per cent. No Chicago business via the Illinois
537 Central. Rio Grande Western proportion, except Chicago business, route D. & R. G., B. & M. R., and C. B. & Q., 70 per cent. Colorado Midland, Burlington & Missouri River and Chicago, Burlington & Quincy, 30 per cent. Chicago business, via Rio Grande Western, give C. & N. W. 80 per cent., and the C. M. & St. P., 20 per cent. Via El Paso, the T. & P., 100 per cent. That was before the Rock Island was through. T. & P. from Texarkana, give the Iron Mountain to St. Louis, 35 per cent. From Paris, Texas, Frisco line, 25 per cent. From Ft. Worth, via C. R. I. & P. to Kansas City, 25 per cent.

Q. That is the Rock Island?

A. Yes sir. C. R. I. & T., that is part of the Rock Island now. M. K. & T., 15 per cent. Of the C. R. I. & P. proportion from Kansas City, C. M. & St. P. get 50 per cent. C. G. W. 20 per cent., and C. R. I. & P. 30 per cent. Route Chicago business via C. R. I. & P. to Kansas City, C. M. & St. P. from there. East of Buffalo, N. Y. C. & H. R., 20 per cent., West Shore 20 per cent., D. L. & W. 20 per cent., Lehigh Valley, 20 per cent.; Erie 20 per cent. Via St. Louis to the East, except Chicago, via Wabash, 20 per cent. Route New York business via Wabash and Erie. Boston business via Wabash, Canadian Pacific, care B. & M. at Newport News, Maine. Pennsylvania Company, 35 per cent. B. & O. 30 per cent. Big Four, 35 per cent. New York connection, Lake Shore and Erie. Of the M. K. & T. proportion, send 70 per cent. of it via Kansas City, and 30 per cent. by St. Louis. The Kansas City proportion via the M. K. & T., deliver to C. M. & St. P. 50 per cent. C. G. W., 25 per cent. Chicago & Alton, 25 per cent. St. Louis, Iron Mountain & Southern,
538 and St. Louis & San Francisco, and M. K. & T. proportions via St. Louis to Chicago, route Wabash, 70 per cent., C. & A. 30 per cent. East of Chicago, give the Lake Shore 10 per cent., Michigan Central 20 per cent., Nickel Plate 20 per cent., Chicago & Grand Trunk, 20 per cent., Pennsylvania Company, 25 per cent. Baltimore & Ohio, 5 per cent. Business to Lafayette, Indiana, route Big Four. Louisville, Kentucky, Big Four. Minneapolis business going via Ogden and Wilmar and Sioux Falls railway, at Sioux City, 50 per cent., and 50 per cent. via U. P. and C. St. P. M. & O. Nashville, Tennessee, via Nashville, Chattanooga & St. Louis, from Memphis. New York business, via Erie from Buffalo. Philadelphia, give the Pennsylvania lines 66⅔, the Baltimore & Ohio, 33⅓. Pittsburg business, via Pennsylvania Company. Sioux City, Union Pacific. St. Paul, Union Pacific, C. St. P. M. & O. 50 per cent., Wilmar & Sioux Falls railway at Sioux City, 50 per cent. on business via Ogden. Wichita, Kansas, route C. R. I. & P. at Ft. Worth. Winnipeg, Union Pacific, C. St. P. M. & O., Northern Pacific at St. Paul. On business through New Orleans, Atlanta, Georgia, via L. & N., Western Railway of Alabama, and A. & W. P. railroad. Asheville, North Carolina, L. & N., Western Railway of Alabama and Southern railway. Birmingham, Alabama, New Orleans & Northeastern, and A. G. S. Jacksonville, Florida, L. & N. and Plant system. When via Wabash, Cincinnati and Columbus business via Big Four. Duluth, U. P., C. St. P. M. & O., and Northern Pacific at St. Paul. Fargo, South Dakota, Union Pacific, C. St. P. M. & O., and Northern Pacific. Fort Dodge, Iowa, U. P. and Illinois Central. Grand Forks, U. P., C. St. P. M. & O. Indianapolis, by the Big Four through St. Louis. Route
539 all Montana business via Ogden. Salt Lake, all to Rio Grande Western. Colorado common points, U. P. 50 per cent. Rio Grande Western 50 per cent. Rio Grande Western proportion, Colorado Midland, 50 per cent. D. & R. G. 50 per cent. Atlanta,

Georgia, send all N. C. & St. L. via Memphis. Baltimore, B. & O. 66⅔ per cent., Pennsylvania 33⅓ per cent. Boston, B. & M. at Rotterdam Junction, Mechanicsville and Shelburne Falls, or via Canadian Pacific and Newport. Macon, Georgia, via L. & N., Western Railroad of Alabama, or via Central of Georgia. Mobile, via L. & N. Montgomery, via L. & N. Savannah, via L. & N. Omaha, on Southern California Fruit Exchange business, route via U. P., others Burlington. Oshkosh, Wisconsin, C. & N. W. Ottawa, Ontario, Canadian Atlantic. Peoria, via Burlington. Philadelphia, B. & O. for the Southern California Fruit Exchange. Pennsylvania, Lehigh Valley and P. & R. Pittsburgh, Pennsylvania Company for the Southern California Fruit Exchange. Rochester, New York, West Shore on Fay Fruit Company business. Lehigh Valley on Earl Fruit Company business. Scranton, Pennsylvania, D. L. & W., for Southern California Fruit Exchange. Sioux City, Union Pacific. St. Louis, Burlington, on Southern California Fruit Exchange business, M. K. & T. on Fay Fruit Company. St. Paul, Southern California Fruit Exchange, route C. M. & St. P. Porter Brothers, C. St. P. M. & O. Syracuse, via N. Y. C. & H. R., for Ruddock Trench Company. Toledo, Southern California Fruit Exchange, Lake Shore. Toronto, Southern California Fruit Exchange, Canadian Pacific. Utica, D. L. & W., Earl Fruit Company. Washington, D. C., Southern California Fruit Exchange, B. & O. Pennsylvania Company for Earl.
540 Waterloo, route C. G. W. Earl Fruit Company. Wheeling, West Virginia, B. & O. for Southern California Fruit Exchange. Winona, Burlington line. Worcester, Massachusetts, Fitchburg railroad. Winnipeg, Northern Pacific. Youngstown, B. & O. Keene, New Hampshire, B. & M. Kalamazoo, Michigan, Michigan Central. Lafayette, Big Four when for Potlitzer Brothers. La Salle, Illinois, Burlington. Lima, Ohio, L. E. & W. and Erie. Lincoln, Nebraska, Burlington, C. R. I. & P. for the Southern California Fruit Exchange. Louisville, Kentucky, B. & O. S. W. for Southern California Fruit Exchange. London, Ontario, Michigan Central, Southern California Fruit Exchange. Milwaukee, C. M. & St. P. for Fay Fruit Company. Minneapolis, C. M. & St. P. for Southern California Fruit Exchange. Montreal, Grand Trunk, Southern California Fruit Exchange. New York, Erie delivery. Preferred delivery by switching: At Kansas City, St. Louis & San Francisco, and the M. K. & T., and C. R. I. & P. At St. Louis, the Wabash, Iron Mountain and Frisco, M. K. & T. and C. & A. Cincinnati, the Pennsylvania, B. & O., and Big Four. Aberdeen, South Dakota, C. M. & St. P. for Porter Brothers. Albany, New York, D. & H. for Earl. Atlanta, Georgia, Southern railway for the Southern California Fruit Exchange. Baltimore, Pennsylvania Company for Earl Fruit Company, B. & O. for Southern California Fruit Exchange. Birmingham, Southern railway for Southern California Fruit Exchange. Boston, Fitchburg delivery. Buffalo, Lake Shore & Michigan Southern for the Southern California Fruit Exchange, Fay Fruit Company, and G. B. Long & Company. Canadian

points, route to Chicago, and Grand Trunk for Southern
541 California Fruit Exchange. Chattanooga, via Southern railway, Southern California Fruit Exchange. Chicago business, via C. M. & St. P. and C. & N. W., Cincinnati, Pennsylvania or Big Four, Southern California Fruit Exchange. Columbus, B. & O. Pennsylvania Company for the Southern California Fruit Exchange. Cleveland, Ohio, Nickel Plate. Denver, Union Pacific. Des Moines, C. R. I. & P., when consigned to C. C. Taft & Company; C. G. W. when for Davidson Brothers. Detroit, Chicago & Grand Trunk when for Southern California Fruit Exchange. Detroit, Michigan Central. Evansville, Indiana, L. & N. Erie, Pennsylvania, Lake Shore. Galesburg, Illinois, Burlington. Grand Island, Nebraska, Burlington. Guelph, Ontario, via Chicago & Grand Trunk. Hamilton, Ontario, Grand Trunk. Hamilton, Ohio, Pan Handle. Indianapolis, Big Four for Southern California Fruit Exchange. Jackson, Michigan, Michigan Central for Southern California Fruit Exchange. Kansas City, M. K. & T. for the Fay Fruit Company. That is an abstract; not entirely complete.

542 Q. Were the routings made by the Southern Pacific according to that table during that period?

A. As nearly as could be, yes sir. We followed those percentages as closely as we could at our end of the line. It is sometimes a pretty difficult matter.

Q. The railroads named there in that table I believe are all parties to the joint tariff?

A. Yes sir. They have divisions by all those lines and a number of other lines that don't appear there.

Q. Does the Transcontinental Freight Bureau have any thing to do with the citrus fruit traffic?

A. It publishes the tariff.

Q. It publishes the tariff on citrus fruits?

A. Yes sir.

Q. How long has the Transcontinental Freight Bureau, to your knowledge, been in operation, and what is the scope of its business?

A. Well, this organization has been in operation ever since I was connected with the company—in 1896—and I suppose previously. Some organization. Whether it was under the name of this bureau or not I can't say.

Q. Who composes the Transcontinental Freight Bureau?

A. The officials of all of the lines parties to the tariff.

Q. Where do they meet?

A. Well, they meet at different points. Sometimes in Chicago, sometimes in Milwaukee, sometimes in San Francisco.

Q. Where do they generally meet?

A. I think at Chicago more often than elsewhere.

543 Q. Do they maintain an office in Chicago?

A. Not the association itself.

Q. Bureau?

A. No sir.

Q. Have an agency there?

A. No sir, I think not. The different lines——

Q. Well, what does Mr. R. H. Countiss have to do with the Transcontinental Freight Bureau?

A. Why Mr. Countiss is appointed by the different lines as the agent. He compiles the rates, submits propositions by correspondence to the different lines in interest, and they vote upon the question at issue.

Q. Changes in tariff rates, joint tariff rates, filed with the commission, are made, then, through the Transcontinental Freight Bureau?

A. Yes sir.

Q. State, if you know, how changes in rates are consummated?

A. Well, if a shipper wants a reduction in rates he submits a proposition to some of the lines, and it is submitted to the bureau, and he issues a circular——

Q. Who does?

A. Mr. Countiss. Sends that to the different members of the bureau, and they make their replies, objections, affirmative and negative votes.

Q. And the rate is increased or reduced by a vote, is it?

A. Yes sir; that is my opinion. Sometimes they meet in a body to make new rates, reduced rates or advanced rates.

Q. In the fall of 1891 you went into the citrus fruit busi-
544 ness, I believe?

A. 1901.

Q. 1901, yes.

A. Yes sir.

Q. Handling of citrus fruits?

A. I served two years.

Q. During that time did you engage in the shipping?

A. Well, I handled the shipping and selling for Ruddock, Trench Company.

Q. What was the extent of their business during that period?

A. In that period they handled about 3,000 cars, I should say.

Q. During those two years?

A. Yes sir.

Q. Are you familiar with the rule established by the defendants here as initial carriers, reserving to themselves the right to control the routing of citrus fruit on connecting lines beyond their own terminals?

A. I think I am.

Q. How long have you been familiar with the operation of that rule?

A. Well, from the railroad side of it, I handled all that business for two years; and the last two years I have handled the shippers' side of the question.

Q. Well, now, state, if you know, what the operative effect is of that rule upon the citrus fruit industry, and upon the interests and

rights of shippers, as to whether it discriminates against them
545 or injures them in any way; and if so, in what respect?
A. First, because the shippers, buyers and growers——

By Mr. DUNNE:

Q. Excuse me. What are you reading from?
A. This is the petition to Mr. Parkyns and Mr. Chambers, signed by the fruit growers', shippers' and buyers' associations of southern California, entering protest against the initial carriers in routing their property.

By Mr. CALL:

Q. Dated when?
A. Dated April 14th, 1902.
Q. Now proceed to answer the question.

Mr. DUNNE: Of course our objection is a general one there. We especially object to this, that it is incompetent, not responsive to the question, and the extra-judicial statements of the person or persons who——

Mr. CALL: Well, read the question, Mr. Longley.

(The question by Mr. Call asked last preceding the objection by Mr. Dunne was read by the reporter.)

Q. State from your own knowledge and information how that rule operates upon the citrus fruit industry. And in so stating, you may refer, if you wish to refresh your recollection by any memorandum made by you at the time you were connected with the business.
A. Well, it is our property, the shippers' property. And they have the same right to route it as a man who buys a ticket over any line has the right to select the route over which he wants to go. The initial carriers don't exercise any——

By Mr. DUNNE:

Q. Are you reading, now, from this memorandum? If you are, I want the record to show it.

By Mr. CALL:

546 Q. Yes, you can state whether you are reading from a memorandum or not.
A. I am reading from this memorandum.
Q. From this letter, this protest, which you speak of?
A. Yes sir.

Mr. DUNNE: If you read from that, I just want the record to show it.
Mr. CALL: That is proper.

A. Well, I understood I could read from it. "That when initial carriers in California insist upon routing shipments of citrus fruit and do not exercise any such authority in routing other commod-

ities, they are discriminating against the growers, buyers and shippers of citrus fruit and such discrimination is contrary to the rules of the Interstate Commission and the laws governing interstate traffic. We cannot handle the citrus fruit crop of southern California unless we are in position to distribute our shipments as in our judgment will best enable us to dispose of same advantageously in markets into which we have established our brands after years of hard work and at large cost, and at points where we know different qualities and kinds of fruit are wanted. Our long experience in the marketing of fruit, together with our system of weather reports, enables us to keep better track of the weather and market conditions North, East and South than initial carriers possibly could do, and therefore we are in better position to determine what routes should be used than the railroad companies possibly can be. We cannot keep our shipments close together west of the Missouri river, as it is necessary to do, unless we have the routing of our shipments. Under our own routing diversions
547 are more easily accomplished and with less expense of telegraphing than when routed by initial carriers. Many of our customers prefer certain routings, and especially certain delivering lines, and their orders are conditioned upon such delivering lines; when shipments are routed contrary to their requests it causes friction and loss of business. Initial carriers after two years' trial, have proven their inability to route shipments of citrus fruits to the best interests of the industry. Their mismanagement in this respect has caused delays, side-tracking of cars of perishable freight, and many shipments have been routed over lines not prepared to give prompt service, thereby making deliveries behind the usual schedule time, thus causing rejections, loss and friction between buyers, shippers and growers. The delay of transportation companies in advising shippers of routings, has been annoying and a great cause of loss to shippers, buyers and growers by reason of their not knowing which way their shipments were going. Initial carriers have not a dollar invested in the southern California fruit business, while shippers, growers and buyers have all their property invested in this business and have a right to its management. Initial carriers, in many instances, have not the most remote idea of the actual destination of cars when they designate routings, as for instance, in case a car is sold in transit and before reaching point designated on original billing. Initial carriers in routing have no knowledge of the variety of California fruit shipped and do not take into consideration whether it would be desirable or advisable for Pueblo, Colorado, or
548 Memphis temperature and trade. Carriers after routing our shipments, decline to give us wire advice as to location of cars in transit without a specific request in each instance, and then a reply is seldom received before our customer buys elsewhere. The rule now established that diversions cannot be made without the consent of the initial carriers is arbitrary, unjust, inexpedient, and gives the control of the citrus fruit business to initial carriers,

who have no financial interest in it excepting the freight charges which they earn, and takes it away from the owners of the property whose entire means is invested in the business. The method employed on diversions is handled by so many intermediate hands that prompt movement of cars is impossible. When our shipments are routed by ourselves, as they should be, we can accomplish change in transit through officials of the connecting lines direct, in one-third of the time it takes under the present conditions to make such changes through initial lines. Notwithstanding initial carriers assume the right of routing shipments of citrus fruits they decline to assume responsibility for loss resulting from errors of their connections. Notwithstanding initial carriers assume the right to route shipments of citrus fruits, they compel shippers to sign bills of lading containing the following provision: 'Owing to the perishable nature of the freight, the initial carriers decline all responsibility for loss and damage.' Then they route over round-about lines and through unfavorable climates and compel shippers to bear the loss resulting from their injudicious and improper routing. The only interest transportation companies have in the citrus fruit business is the
549 freight charges they earn for hauling the cars from California to eastern markets, and they compel shippers to file a bond with them guaranteeing them all freight and other charges. Therefore, they have no right or interest in the shipment excepting to haul it to destination demanded by shippers. In routing shipments of citrus fruit initial carriers deprive shippers, buyers and growers of the right to control their own property until it arrives at a fictitious destination, where buyers wait until the market is glutted with fruit, when shippers are forced to dispose of it at buyers' prices and with loss to themselves. Tariff S. R. 395 provides rates via a number of routes, each individual line having its own advantages for superior facilities, and shippers should have the right to select over which of such routes where the through rate applies, they want their shipments to go. Initial carriers cannot know over which of such routes it is best for the shipments to go with advantage to buyers, shippers and growers. Initial carriers have been routing shipments of citrus fruit for two years past, and during those two years the business has been practically a failure, which demonstrates that if initial carriers continue to route southern California citrus fruit shipments the industry will be seriously injured. It has been shown that it is impossible to handle the traffic satisfactorily under present conditions. The remedies that have been applied to overcome the foregoing objections have been put to a practical test and in almost all cases have proven a total failure. Initial carriers claim the right to route citrus fruit shipments in order to pre-
550 vent the paying of rebates by eastern lines. This is a fictitious claim, in our opinion. We here assert and insist that we neither want nor ask any rebates on our shipments from any carrier. The legitimate profits in the business, if not interfered with by carriers, are sufficient for us without asking any favors from rail-

road companies. We are satisfied that the real reason why initial carriers wish to route shipments is owing to the fact it is an aid to a pooling arrangement by which they divide the earnings of the southern California citrus fruit business, and dividing the earnings, it is necessary for them to divide the hauling. We are prepared to prove this statement, if necessary. We respectfully ask your consideration of the foregoing reasons on which our protest is based, and trust that the justice and reasonableness of our position in this matter will be recognized by you. It is our earnest desire that this request should be met in a friendly and liberal spirit, as we wish to preserve harmonious and friendly relations with the initial carriers. However, the conditions under which we are compelled to operate under present routing arrangements being intolerable, and as we must have relief, we wish to say to you frankly that unless this relief is promptly given we will agitate this question in such a manner as to force it upon the attention not only of the Interstate Commerce Commission, but also upon the executive, judicial and administrative departments of this Government. We are satisfied that if you do not willingly recognize our rights in the matter of routing, such recognition can and will be forced, although as intimated already, we are reluctant to take a position of antagonism towards
551 carriers, believing that it is to the best interest of carriers and shippers that friendly relations should be maintained. We sincerely hope that on these facts here submitted you will recognize the injustice we have suffered under for the past two years, and that you will take immediate steps towards restoring to us our right to handle our business and move our shipments the same as the shippers of other commodities do."

Q. That, you say, is a protest or statement filed by whom?

A. By the fruit growers, shippers, and buyers association of southern California.

Q. Well, state, now, whether, from your knowledge of the citrus fruit business, and your experience in those matters—whether the facts as to the operative effect of the routing rule are correctly stated in that protest?

Mr. DUNNE: We object to the form of that question as leading, and reserving all the other grounds.

A. Well, I consider that this——

By Mr. CALL:

Q. State whether or not the reasons you have given, or the effect of the routing rule as stated, from your experience are correctly stated?

A. Well, these reasons are correctly stated, according to my experience during the seasons that I represented the Ruddock-Trench Company.

Q. I asked you to state originally what the effect was upon the citrus fruit business of the routing regulation, and in answer to that

I understand that you were reading from this memorandum an
that you gave that as an answer to that question?

552 A. Yes sir.

Q. State whether or not the defendant initial carriers, d
or do not, as a general rule, refuse to shippers the right to route ove
connecting lines?

A. They as a rule refuse the routing requested by the shippers.

Q. During the course of your business as a shipper of citrus fruit
did you ever demand the routing on a bill of lading?

A. Yes sir.

Q. Or on shippers' order. Well, were such demands acceded t
or refused?

A. Well, in one instance that I recall, they switched the car ou
and then switched it back to the side track, and we learned fro
our agent that they wouldn't put the routing on the shipping re
ceipt. So they waited four days later before they would give us
decision as to whether they would or they would not, and then the
told us if we wanted the routing on the shipping receipt it would b
subject to local rates.

Q. Said what?

A. It would be subject to local rates to the different junctio
points.

Q. Well was that a higher or a lower rate?

A. That was a higher rate. One dollar and twelve and a ha
cents, I think, to Ogden and a dollar and a quarter from Ogden t
Omaha, I believe.

Q. The joint tariff rate was a dollar and a quarter a hun
dred?

553 A. The joint tariff rate was a dollar and a quarter a hun
dred.

Q. So the charge they made there was nearly twice as much a
the tariff rate?

A. Yes sir. There are other instances this season in which loca
rates have been applied.

Q. State what other instances, if any, of that character oc
curred?

A. Well, I don't remember particularly. I remember two in
stances this season local rates were applied on cars that were route
by shippers.

Q. The defendants took the freight, routed it as requested, an
charged local rates. Is that what I understand you to say?

A. They routed their cars according to the shippers' request, ap
plied local rates to the different junction points.

Q. Were those shipments you refer to shipments of your firm o
of other firms?

A. These last two I mention were of the California Fruit Agency
The California Fruit Agency were the sellers and the Californi
Citrus Union were the shippers.

Mr. CALL: Let us adjourn now until tomorrow at ten o'clock.
Adjourned until October 20th, 1903, at ten o'clock a. m.

554 OCTOBER 20th, 1903, ten o'clock a. m.

E. M. NADAL.

Direct examination resumed.

By Mr. CALL:

Q. Referring to the effect of the rule of the initial carriers reserving the right to route beyond their own terminals, state what effect, if any, that rule has upon shippers as to discrimination between shippers, whether it operates to discriminate between shippers of citrus fruit in favor of one or against another.

A. Well, there has been cases where they have made exceptions in favor of certain shippers. Of course it gives them the benefit of better service over general lines.

Q. Do you say that the rule does in fact in some instances operate to discriminate in favor of some shippers and against others?

A. Yes sir.

Q. You have known of instances of that kind since you have been in the citrus fruit business?

A. Yes sir.

Q. Well, what effect does the routing rule have as to discriminations between connecting lines? Does it, or may it, operate in favor of one connecting line and against another?

A. Well, there is no incentive for connecting lines to put forth any effort towards furnishing satisfactory service or necessary service. They get a certain percentage of the business regardless of the service they render. The initial line service is also indifferent. They
555 cannot criticise their connections to any extent for poor service.

Q, That applies to time as well as facilities?

A. Time as well as facilities. If you sustain losses by poor services of a connecting line, they won't settle your claim, because they say they get their division of the traffic from the initial carriers. The shipper has no influence with the connecting lines.

Q. What effect does the routing rule have upon competition between connecting lines?

A. It destroys competition entirely, I should say.

Q. Well, what effect does the routing rule have upon commodities? Now, state, as preliminary to that, whether the defendants in this action apply this routing rule, reserving the right of routing, to commodities other than citrus fruits?

A. They don't apply the routing rule to other commodities; that is: they don't exercise the right to route other commodities.

Q. But exercise it solely as to citrus fruit?

A. Yes sir.

Q. Well, now, what effect does that have upon commodities? Does it operate to discriminate in favor of or against commodities?

A. Well, it discriminates against citrus fruit.

Q. Take the apple industry or other deciduous fruit industry.

A. Shippers control the routing, and they naturally have mor influence with the railroads, both connecting lines and initia carriers.

Q. And how does that affect their markets?

556 A. Well, they have control of their property and they ca keep track of their shipments better, and they have bette control of the market. Better service means better markets. If receiver knows when his fruit is going to reach him he can usuall make arrangements for its proper disposition.

Q. State, if you know, how the percentages are arranged and wh arranges and determines the percentages awarded to each connec ing line on through shipments; that is to say, suppose that a shi ment were made from Los Angeles to New York and by way o El Paso, and there was a number of railroads entering into tha haul. I understood you to say that a certain percentage wa awarded to each line entering into the through haul.

A. A certain percentage of the rate.

Q. Yes, a certain percentage of the rate.

A. Yes sir. I gave you the table of percentages of the busines

Q. Yes.

A. Of the cars.

Q. Now, I am speaking of the percentage of the rate. How i that determined?

A. That is a published division sheet.

Q. Have you any copies of the division sheet showing the percen age of the rate awarded each link in the through line for any give time?

A. I have not here. The lines east of the Mississippi river o New York business will get 29 per cent., I think. East of Chicag 25 per cent. on New York business.

557 Mr. CALL: Mr. Barnwell, can you furnish us a copy of tha division sheet?

Mr. BARNWELL: We have division sheets in our office of a through rates.

Mr. CALL: Yes.

Mr. BARNWELL: I presume Mr. Chambers could furnish them t you, Mr. Call.

Mr. CALL: I would like to have a copy of that, if you will furnis it to us, and have it marked Complainant's Exhibit 6.

Mr. NORTON: Will you leave that until Mr. Chambers comes?

Mr. CALL: Well, I wanted to call attention to it at this time, i you will make a note of it, so that he can bring it with him.

558 Q. Well, state, now, who, or what body, or officer, or board if you know, determines and fixes those percentages of th rate?

A. It is published by the Trans-continental Freight Bureau at San Francisco.

Q. State what that bureau is and what it is composed of.

A. I think that was in——

Q. That is the same bureau you referred to yesterday?

A. Yes sir.

Q. That is a bureau, you said, composed of a member from each railroad entering into the——

A. The members of each road, yes sir.

Q. Into the joint tariff.

A. Parties to the joint tariff.

Q. And made public through Mr. Countess.

A. Yes sir.

Q. Did you say?

A. Yes sir.

Q. Now, after shipments are made of citrus food from southern California and shippers allowed the railroads to route the shipment, state, if you know, whether, upon request, the railroad companies usually and promptly furnish shippers with information as to the route which has been assigned by the company to any given shipment.

A. No, we have had a great deal of trouble in the past on account of the delay in getting that information.

Q. How has that operated?

A. Well, Southern Pacific cars are re-billed from Colton to Los Angeles, and they are pulled out during the day and probably billed at night. Consequently we are not advised until the next day after dinner, as a rule, about noon. On northern freight we have more trouble, because the fruit is billed from Sacramento to Marysville, and for a long while they sent it by mail and we never got those advices for several days.

559

Q. During what period was that?

A. That was last November.

Q. During the orange season?

A. Yes sir, the beginning of the orange season.

Q. Please explain how delay in being furnished with information as to routes affects the handling of the crop, of the freight.

A. Well, when a car is loaded it is necessary to get the information to the east as thoroughly as possible, and every hour's delay affects the disposition of the property—is liable to, that is. We never know what is in a car until it is packed up and loaded, and after a car is loaded we cannot hold it on the track for twelve or twenty-four hours until we take it up with the general offices how they are going to send that car. We can't get to the trade until we know. And finally we do take chances on it, and we have a car that should have gone by Ogden go around El Paso or somewhere around that way. Each territory has its particular kind of fruit, sized fruit, quality and price, and the market conditions govern.

They want certain fruit at certain prices, poor fruit at high prices, and good fruit at low prices.

Q. Referring again to the table of percentages, of the percentage of freight or number of cars awarded to each connecting
560 line, state generally how that table is operated.

A. I think I mentioned yesterday that there was a given percentage to each line.

Q. Well, does that percentage table have any immediate effect upon shippers as between each other?

A. Yes sir. If all shippers wanted the same line, which they do in many cases to certain points, it will be impossible to follow out that percentage table. There are certain deliveries and certain courtesies extended by different lines to different shippers and receivers in the east. In fact, they have the advantages that we sometimes know nothing about, and that the railroads don't know anything about, and it does not develop until the car gets there. And it is rejected, delayed in disposition, decays.

Q. State, if you know, whether in operating under this percentage table of business, the defendant carriers discriminate and if so, in what manner.

A. Discriminate?

Q. As between shippers or in any other way. Or, whether it can have that operation.

A. As I stated before, it does discriminate, because all the shippers cannot have what they want at all times.

Q. And so that if it was given to one it would be taken away from another?

A. Why, in order to carry out the percentage table that would be necessary.

Q. What effect does the routing rule have as to shipping over the most direct and best routes or otherwise?

A. Well, carriers sometimes send cars by a round-about
561 way. Sometimes they load cars on Santa Fe and turn them over to the Southern Pacific, going to a Santa Fe point; and it is turned back to the Santa Fe at Colorado, somewhere. Argentine, for instance. Load cars on Santa Fe and give them to the Southern Pacific, and they will haul them into Pueblo and send them back to the Santa Fe. That causes delay. I recall two cases of that kind that I have a record of.

Q. Well, under this percentage rule or routing rule, do the carriers charge any higher rates over poor and longer routes?

A. They have certain conditions that discriminate against the citrus fruit industry. Take as an example business from San Diego. It is very desirable fruit for Texas markets. The most direct route to Texas points is through Los Angeles and El Paso on Southern Pacific. The rate to San Antonio, for example, is one dollar and forty-one cents. The rate via the Santa Fe from San Diego to San Antonio would be a dollar and a quarter. And the Santa Fe route is—well, I know of shipments to take fifteen days to get there.

Q. From San Diego to——

A. San Diego to San Antone. The same way up in Oroville district. I believe the Santa Fe claims that the Southern Pacific say the local from San Diego to Los Angeles is too high to absorb. Yet on business from Marysville and Oroville they haul the traffic three times as far and turn it over to the Santa Fe at Mojave, but they don't charge any excess rate.

Q. But they do make that charge on citrus fruit from San Diego?

562 A. Yes sir, going into Texas, very desirable territory for that class of fruit. They also route cars to Fort Worth; we have had a number of cases over there where they suffered damages; from Oroville via Ogden and C. R. I. & P. to Fort Worth, Texas. In transit twelve and fifteen days. Losses resulted, claims are unpaid, and declined.

Q. How does that rule work out with reference to freight to Colorado points, from northern California, as compared with Southern Pacific?

A. For some reason or other they exact an arbitrary on business going into Colorado, that is, from Oroville, points on the Oroville branch line. The rate, of course, is twelve and a half cents less. But they get the entire revenue on Colorado business by the Union Pacific.

Q. I don't want to have you repeat the same matter, but I inquire for more definite information whether you have stated anything about the application of the routing rule to the time in transit, how that affects the time in transit as compared to the operations under the practice of the shippers' routing.

A. Well, during the busy season, when they have a good deal of west-bound traffic, they naturally give that the preference, because it is competitive traffic. I have known of cases where they have side-tracked 250 cars of oranges to let through a train load of empty box cars going east.

Q. How long ago was that?

A. Last season. They had the way-bills all made up and train made up; got information from the freighting department to hold the orange train and let through the box cars.

563 A. What is the average time, as near as you can determine, of orange shipments en route east-bound to an average point of distribution under the routing rule?

A. Well, it has been very irregular in the past. You might say twelve days to Chicago.

Q. How does that compare with the time prior to the establishment of the routing rule.

A. I was not familiar with the business then, but I understand they were getting six days to Chicago.

Q. Well, how does that compare with the time schedules of the railroads, defendants, here?

A. Well, the Santa Fe have a schedule of 168 hours from here to Chicago. Seven days, that is.

Q. Does the Southern Pacific have a schedule?

A. The Southern Pacific have—I believe they make—I should imagine about—well, I think Mr. Monroe says that they figure on a schedule of about 190 hours, via Ogden.

Q. About eight days?

A. About eight days, yes sir.

Q. Who is Mr. Monroe?

A. He is traffic manager of the Union Pacific. That was what was told me by their local representative here.

Q. Have you a copy of the printed schedule of the Southern Pacific or the Santa Fe?

A. I have a Santa Fe schedule.

Mr. CALL: Mr. Parkyns, will you produce and file with the examiner a copy of your schedule?

Mr. PARKYNS: We have not got such a thing.

564 Mr. CALL: You have no printed schedule?

Mr. PARKYNS: No sir.

Mr. NORTON: You are asking for the schedule for orange trains?

Mr. CALL: Yes.

Mr. NORTON: Freight trains.

Mr. CALL: Yes.

Mr. NORTON: There is none, I believe.

Mr. CALL: For oranges. You have for trains generally?

Mr. BARNWELL: We have the regular time tables.

Mr. CALL: The regular time tables for freight generally?

Mr. BARNWELL: For freight generally, and all freight is designated by numbers.

Mr. CALL: Yes. Well, will you produce a copy of that and give it to the examiner here?

Mr. BARNWELL: Well, there are a number of copies. We would be very glad to produce them, but they are employees' time tables on every division clear through to Chicago.

Mr. CALL: What is the time shown by those schedules?

Mr. BARNWELL: I have forgotten what it is. I think it is about seven days. I have forgotten the exact number of hours, but I think it is about seven days, the schedule time.

By Mr. CALL:

Q. Have you a schedule, Mr. Nadal?

A. I have what I supposed was a copy of the Santa Fe schedule. It says: "Orange trains, 34, Los Angeles to Chicago. Leave San Bernardino 3:00 a. m. Monday." Goes on to give you the time at different points. At the bottom it says: "Deduct two hours change in time," and so forth, "168 hours and 40 minutes."

565 Q. Who furnished you that?

A. I got that from the California Fruit Agency.

By Mr. NORTON:

Q. That is not printed, is it?
A. (Hands paper to Mr. Norton.)

Mr. NORTON: Typewritten matter.
The WITNESS: I don't really know——
Mr. NORTON: Mr. Barnwell says that is not our issue.
Mr. BARNWELL: We will give you our own time cards, Mr. Call, if you want it.

By Mr. CALL:

Q. Since the putting into effect of the routing regulation by the carriers, have you had any difficulty in getting cars over either road for shipment over that line?
A. We had a shortage of cars in December, January, February and March, I think.

By Mr. DUNNE:

Q. What year?
A. 1902 and '3. I had correspondence on the subject.

By Mr. CALL:

Q. Proceed and give any definite information you have concerning car shortage?
A. Letter of April 4th, stating, "We will need three refrigerating cars at Anaheim." Advised that, "They cannot be furnished at once."
Q. Who is that from?
A. From Ruddock, Trench Company, addressed to the Southern Pacific.
Q. Was that sent to the Southern Pacific in the regular course of mail?
A. Sent over by a messenger, probably. April the 4th.
Q. What year?
A. 1903. Another communication, March 10th, stating
566 that we have fruit in the packing house that was waiting equipment for some time.
Q. Were those communications that you have there sent to the companies to whom they were addressed?
A. Yes sir. I took it up with the transportation department of the Southern Pacific, and they told me at one time that they were not able to supply the demand by one-third.
Q. The Southern Pacific said they were not able to?
A. Yes sir.
Q. What was the effect of that?
A. Well, we have a number of claims in for fruit held in packing house in Burnett, Glendale, Covina, Corona.
Q. Was any of that fruit held there for want of cars over Santa Fe?

A. We were short. The instance I recall. We wanted Southern Pacific cars; Corona. It was going to a territory that the Santa Fe cars could not move. It was held for quite a while. Fortunately we sustained no loss on that shipment. It was sold here.

Q. Concerning the other shipments that you were unable to supply, did you meet with any losses on those?

A. We were supposed to be able to sell them in transit. We didn't do it, and sustained heavy losses by reason of decay. It was partially attributed to holding the fruit in the house. Some of it was packed up.

Q. What are the conditions under which citrus fruit shipments are made, as to requiring bond or indemnity from the shipper, or otherwise?

A. Well, the railroads require a bond from shippers for
567 guaranty of all charges, freight, refrigeration, and any other charges. Those bonds carry conditions which are supposed to release the carriers for liability such as decay, and delay, damage of any character.

Q. Are those bonds exacted by both roads, as a condition to making the shipment?

A. Yes sir. You would have to prepay your shipments in the absence of that bond.

Q. Is the same kind of a bond or indemnity required by both roads?

A. Yes sir, similar.

Q. Have you got a copy of the indemnifying bond, the form of it?

A. Copy of the Santa Fe bond, and their release.

Q. Southern Pacific is substantially the same, you say?

A. I think so. It is a little different in construction.

Q. But in what is the difference, if you know?

A. Well, I don't think there is any difference in the intention, the obligation.

Q. Is this a form of bond furnished by the Santa Fe?

A. No, that is a release, for the application of the rate.

Q. That is to say, they will not apply the rate unless this release is made?

A. Yes sir.

Mr. CALL: Well, I will offer this in evidence, to be marked Complainant's Exhibit 7.

The release last offered is as follows:

568 (Form 66, Regular.)

Hall–6–'02–2M–14973.

Southern California Railway Company.

Santa Fe.

Season Release.

No. —.

—— Station, —— —, 190–.

Memorandum of agreement made and entered into this — day of ——, A. D. 190–, by and between the Southern California Railway Company, for itself and connecting carriers severally, party of the first part, and —— ——, of ——, part- of the second part.

Whereas, the tariffs and classifications of the said company provide three rates on certain kinds of freight liable to damage in the transportation thereof, the first of which rates is charged upon such freight when transported at carrier's risk; the second of which is charged upon such freight when transported at owner's risk; the third of which is charged upon such freight carried at a special valuation:

Now, therefore, the party of the first part, in consideration of the agreements and releases hereinafter set forth, hereby agrees to charge the said part- of the second part the rates provided in said classifications and tariffs at the time in force for freight carried at owner's risk, upon all such freight as it may transport for the part- of the second part, or which may be delivered or consigned to it by the said part- of the second part, from the date hereof until the thirty-first day of December, A. D. 190–.

In consideration whereof, the said part- of the second part hereby expressly agree- with said party of the first part, that all such
569 freight consigned by the said part- of the second part, whether the said part- of the second part be the owner or the agent of the owner thereof, shall be received and transacted by the said party of the first part and connecting carriers, if any, at owner's risk, and that the owner of said goods shall and will assume all risk of damage to such freight which may occur while the same is in transportation on the Southern California railway or connecting lines, over which such freight shall pass, during the period mentioned above, resulting from freezing, leakage, chafage, breakage, decay, delay, or from any other cause incidental to its transportation.

This release guarantees the consignor or consignee signing it the lowest rate provided in classification or tariffs, on account of the agreed valuation of articles named therein. The Southern Califor-

nia Railway Company and connecting carriers are released from any valuation exceeding that provided in the current classification, which valuation so contained in said classification or tariffs, is expressly accepted by the part- of the second part as the value of the articles so shipped, for the purpose of such shipment. That the differences in the tariffs and rates for the transportation of such freight by said party of the first part have been fully explained to said party of the second part, and that said party of the second part has read and fully understands all of the provisions and conditions of this release and the difference in the tariff rates for the transportation of such freight, and selects and assents to the provisions and condi-
570 tions of this release for and in consideration of the benefits of the reduced tariffs and rates therein specified.

In witness whereof, the party of the first part has caused this agreemont to be subscribed by its agent and the part- of the second part ha- hereunto set -h- hand- upon the day and year first above written.

SOUTHERN CALIFORNIA RAILWAY COMPANY.

By —— ——, Agent.

Witness:

—— ——.

This document should be issued in original only, unless shipper desires to retain copy for his file. Send original to audit office.

571 Q. What is this paper here you hand me?

A. That is a bond of indemnity to guarantee freight charges.

Q. That is the bond signed by sureties?

A. Yes sir.

Q. To be approved by whom?

A. Approved by reliable parties.

Q. How long has the Santa Fe railroad required such a bond as that as a condition for making a citrus fruit shipment and applying the rate.

A. Well, it has been in existence as far back as my connection with the railroad company.

Mr. CALL: Well, I offer this.

By Mr. DUNNE:

Q. Do you mean as far back as 1896?

A. Well, as far back as the orange—I might correct that by saying as far back as the citrus fruit traffic is concerned. I think it was in existence prior to that time, or a similar bond.

Q. Does that relate to both papers?

A. Well, that has always been in effect, I think.

By Mr. CALL:

Q. That release?
A. Yes sir.
Q. And the bond is the bond——
A. I don't know how old that bond is.
Q. Well, this is what is required now?
A. What is required now.

Mr. CALL: Well, mark this form of bond "Complainant's Exhibit 8."

572 The bond last offered is as follows:

C., O. C. & Co.–9–27–0.–1–5M–73 Fe, The A., T. & S. F. Ry. Co., G., C. & S. F. Ry. Co., Santa Fe Pac. R. R. Co. Sou. Cal. Ry. Co., The S. F. & S., J. V. Ry., The S. K. Ry. Co. of Tex.

(Form 100, Standard.)

Santa Fe.

(Santa Fe.)

Bond of Indemnity.

For Changes in Freight Shipments, Delivery Without Surrender of Original Bill of Lading, and Guarantee of Freight Charges.

Know all men by these presents: Whereas, the within named principal expects, from time to time, during the year 190– to have goods transported over the lines of one or more of the following named railroad companies: the Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, Southern California Railway Company, and the San Francisco and San Joaquin Valley Railway Company and their connecting lines, directly or indirectly consigned to such principal, or to some other person or company, and such principal may, from time to time, desire a change in the routing of such goods or in the name of the consignee or deliveries to be made at other points or to other persons than those designated in the original bill of lading, or may desire deliveries without surrender of the original bill of lading; or may desire changes made in transportation or deliveries in other respects, and

Whereas, it is to the interest of said principal that such
573 changes shall be made when requested, but such railway companies, and each of them and their connecting lines, desire to be indemnified against loss consequent upon the making of any such changes so requested, and

That therefore, we —— —— as principal, and —— —— and —— —— as sureties of the — of —— county of —— State of —— in consideration of the Atchison, Topeka & Santa Fe Railway Company, or Gulf, Colorado & Santa Fe Railway Company, or Santa Fe Pacific Railroad Company, or Southern California Railway Company, or the San Francisco and San Joaquin Valley Railway Company, or other companies operating connecting lines, at any time during the year 190–, complying with the request of said principal, either by changing the routing, destination or name of consignee, or by making any change with respect to the transportation or delivery of any shipment, or by making delivery without surrender of bill of lading, during the said year 190–, do hereby jointly and severally, firmly bind ourselves, our heirs, executors, administrators, assigns, and each of them to indemnify and save harmless the Atchison, Topeka & Santa Fe Railway Company, or Gulf, Colorado & Santa Fe Railway Company, or Santa Fe Pacific Railroad Company, or Southern California Railway Company, or the San Francisco and San Joaquin Valley Railway Company, and such other companies or corporations over whose line or lines of road such shipment or shipments may be transported, their and each of their successors and assigns, from and against any and all
574 liability, suits, costs, damages, expenses, losses or claims for loss or damage of every kind or nature which may be made against or suffered by said company, companies or corporation or any of them, by reason of any and all changes made during the said year 190–, under the said principal's instructions, in the transportation, handling or delivery of merchandise or property, including deliveries made at destination or other points without surrender of original bill of lading.

And we do also undertake that as to all goods either shipped by said principal through said The Atchison, Topeka & Santa Fe Railway Company, or Gulf, Colorado & Santa Fe Railway Company, or Santa Fe Pacific Railroad Company, or Southern California Railway Company, or the San Francisco and San Joaquin Valley Railway Company, or received by said principal from said The Atchison, Topeka & Santa Fe Railway Company, or Gulf, Colorado & Santa Fe Railway Company, or Santa Fe Pacific Railroad Company, or Southern California Railway Company or the San Francisco and San Joaquin Valley Railway Company and upon which transportation charges or other customary charges made by carriers upon said goods, shall remain unpaid in whole or in part for the period of five days after arrival of said goods at destination, or after the total or partial destruction of said goods by any cause other than negligence of the carrier, we will promptly pay to said The Atchison, Topeka & Santa Fe Railway Company, or Gulf, Colorado & Santa Fe Railway Company, or Santa Fe Pacific Railroad Company, or Southern California Railway Company, or the San Francisco and San Joaquin Valley Railway Company, upon demand, the amount of such
575 charges so remaining unpaid, including the proportion of connections of said The Atchison, Topeka & Santa Fe Rail-

way Company, or Gulf, Colorado & Santa Fe Railway Company, or Santa Fe Pacific Railroad Company, or Southern California Railway Company, or the San Francisco and San Joaquin Valley Railway Company, and in default of such payment will further pay expenses of collection, including reasonable attorney's fees and costs.

This instrument and all the covenants thereof shall inure to the benefit separately of all the companies over whose lines the shipments may be transported, or by whom delivery may be made.

Dated at —— State of —— this — day of —— 190-

Witness: —— ——. For —— ——, Principal. [SEAL.]
Witness: —— ——. For —— ——, Surety. [SEAL.]
Witness: —— ——. For —— ——, Surety. [SEAL.]

The undersigned, principal in the within and foregoing bond of indemnity, hereby agrees with each one of the railway companies therein referred to, that if any or all of such railroad companies accept the within bond of indemnity as sufficient, and, upon the receipt by any of them of any written request from the undersigned to them or any of them to change the consignee, destination or routing of any shipment made by the undersigned over the lines of any of said companies, or to make delivery without surrender of bill of lading, if in accordance with such request said companies or any of them attempt to make the change or changes of delivery so requested, then and in such case the undersigned will and
576 hereby does release and waive all claims for damages of every kind, nature and description which may accrue to the undersigned because of any failure to make any such attempted change or delivery, or on account of any delay occasioned in attempting to make or in accomplishing such change or delivery.

The foregoing agreement shall inure to the benefit of each of the companies over whose lines the shipments may be transported, or by whom delivery may be made.

Dated at —— State of —— this — day of —— 190-

—— —— Principal. [SEAL.]

NOTE.—While responsible and disinterested individuals, not connected with applicant's business, may be accepted as sureties, we wish to utilize a responsible surety company whenever and wherever possible in preference to individuals. Agents will be held personally responsible if individual guarantees prove insufficient.

(From line 10, page —, to line 12, page — is printed in red ink, diagonally across the face thereof, the following:)

The guarantee clause named in this bond is not intended to cover or allow agents to "deliver shipments without collection of freight charges" but simply to guarantee the charges on perishable or other shipments which in the usual course would have to be "prepaid."

577 Q. Does the Southern Pacific require similar releases and bonds, do you say?

A. Yes sir.

Mr. CALL: Mr. Parkins, you don't dispute the accuracy of these papers, I don't suppose?

Mr. PARKINS: No.

Mr. CALL: You know they are copies?

Mr. DUNNE: Do you mean these papers that have been put in evidence?

Mr. CALL: Yes, this bond and release, as being substantially the form.

Mr. DUNNE: Well, he has testified they are the form.

Mr. CALL: Yes.

Mr. DUNNE: So, up to date that is the only evidence upon the point.

Mr. CALL: I thought if there was any question about it Mr. Parkins could furnish copies and file them in evidence.

Mr. DUNNE: We can get copies of our release and bond?

Mr. PARKYNS: Yes.

Mr. CALL: Yes, you do that, please. And mark those to be marked Complainant's Exhibits 9 and 10.

The release last offered in evidence is as follows:

578 (4-11-'03-3M.) 2 T F 144.

Southern Pacific Company.

Season Freight Release.

—— Station, —— —, 190-.

The following applies to and covers all goods, wares and merchandise delivered at any time from date hereon during the current year.

Whereas, the undersigned ship and receive goods, wares and merchandise over the lines of the Southern Pacific Company, and its connecting transportation companies at above station to and from diverse parties at diverse stations on said lines;

And whereas, said company and its connections propose to transport such goods, wares and merchandise at rates which are less than charged for the same classes of freight shipped under the carriers' legal responsibility, in consideration of the undersigned releasing the carriers as hereinafter set forth;

And whereas, the western classification, in connection with the tariffs of the Southern Pacific Company, often provides lower rates for shipments conditioned on an agreed valuation;

And whereas, the undersigned desire to secure the benefit of such special rates, and to avoid the trouble and inconvenience of executing a separate contract for each shipment;

Now therefore, in consideration of the premises, I or we do hereby release the Southern Pacific Company, and each and every other transportation company over whose lines said goods may pass, from

any and all liability for damage by leakage, shifting, chafing
579 or breakage on any and all shipments whenever the tariff provides a lower rate for transporting at owner's risk; or for breakage of any property packed in boxes, barrels, crates, or bales when such packages have not been roughly handled or for breakage, chafing, wet, rest, or any other injury resulting from the fragile nature of the freight, imperfect or insecure packing, bad or insufficient cooperage, or shipping without packing, or from the decay of perishable articles, or from damage arising from the effects of heat or cold, or damages by stains to packages, by sweating or fermentation, or damages to freight by reason of its own inherent vice, or liability, and from all loss and damage by any cause whatsoever not resulting from the gross negligence of one or another of said transportation companies, on all goods, wares and merchandise which may be shipped or received by us at released or reduced rates on any or either of the lines of the said Southern Pacific Company or connecting companies.

And do further release said Southern Pacific Company and each and every company over whose line or lines said freight may have been or will be transported to destination, from all liability for loss or injury when lower rate is applied conditioned on a limited valuation while on any or either of the lines of said company or companies.

—— ——.

—— ——, Witness.

580 (Endorsed.)

2 T F 144.

Southern Pacific Company.

Season Freight Release.

By —— —— at —— station, between —— 190– and —— 190–.
On shipments Both dates inclusive.

Instructions.

1. When covering east-bound shipments, to be so endorsed on back and promptly forwarded to the freight auditor, tissue or impression copy to be retained by the agent.

2. When covering west-bound shipments to be so endorsed on the back and promptly forwarded to the freight auditor, tissue or impression copy being retained by agent.

581 The bond last offered is as follows:

(4-10 '02-5M.) 2 T F 170.

Southern Pacific Company.

(Pacific System and Oregon Lines.)

General Indemnity Bond.

—— STATION, —— —, 190-.

Whereas, the undersigned principal does, and is about to do business as consignor and consignee, or agent for consignors or consignees with Southern Pacific Company,

Whereas, for the mutual accommodation of said principal and said Southern Pacific Company, it is desirable that the various things hereinafter referred to shall be done by said Southern Pacific Company and its connections, in consideration of the indemnity by this instrument provided, we, the undersigned, and each of us, in consideration of what is hereinbefore and hereinafter more particularly set forth, hereby jointly and severally agree with said Southern Pacific Company as follows:

1. In all cases where any goods shall be delivered to said principal, or at the request of said principal, by said Southern Pacific Company or any of its connections, without surrender of the original shipping receipt or bill of lading therefor, said Southern Pacific Company and its connections are hereby fully indemnified and saved harmless as against all damage or liability of whatsoever character, caused thereby or in any way connected with said delivery, or by any *bona fide* failure to accomplish such delivery, including all reasonable attorneys' fees, counsel fees, costs and expenses, paid or
582 incurred in the premises by said Southern Pacific Company, or its connections.

2. In all cases where, at request of said principal, goods shall be diverted from their original destination, or consignee charged, or inspection permitted, said Southern Pacific Company and its connections are hereby fully indemnified and saved harmless as against all damage, or liability of whatsoever character, caused thereby or in any way connected with said diversion, change of consignee, or inspection, or by any *bona fide* failure to accomplish such diversion, change of consignee, or inspection, including all reasonable attorneys' fees, counsel fees, costs and expenses, paid or incurred in the premises by said Southern Pacific Company or its connections.

3. In all cases where goods shall have been stopped in transit, or other disposition thereof made at request of said principal, said Southern Pacific Company and its connections are hereby fully indemnified and saved harmless as against all damage or liability of whatsoever character, arising therefrom or in any way connected therewith, including any *bona fide* failure to accomplish such stoppage in transit or other disposition, including all reasonable attor-

neys' fees, counsel fees, costs and expenses, paid or incurred in the premises by said Southern Pacific Company or its connections.

4. As to all goods either shipped by said principal through said Southern Pacific Company, or received by said principal from said Southern Pacific Company, and upon which transportation
583 charges or other customary charges made by carriers upon said goods shall remain unpaid in whole or in part after demand or for the period of five days after arrival of said goods at destination, or after the total or partial destruction of said goods by any cause other than negligence of the carrier, we will promptly pay to said Southern Pacific Company, upon demand the amount of such charges so remaining unpaid, including the proportion of connections of said Southern Pacific Company, and in default of such payment will further pay all expense of collection, including reasonable attorneys' fees and costs.

The foregoing obligation will be in force from and including the date first above-mentioned, until ——.*

In witness whereof, the parties hereto have hereunto set their hands.

Witness: —— ——. For —— ——, Principal.
Witness: —— ——. For —— ——, Guarantor.
Witness: —— ——. For —— ——, Guarantor.

N. B.—Sureties must be responsible and disinterested individuals, not connected with applicant's business. Agents will be held personally responsible if guarantee proves insufficient. A responsible surety company may be accepted as guarantor in lieu of individuals.

584 (Endorsed.)

General Indemnity Bond.

For ——. Issued by ——.
Station ——. Date ——, 190–.
Expires ——, 190–.

Instructions.

Use this bond instead of the following blanks:

2 T F 7. Contract to secure change in destination or consignment, of property, or to permit inspection, or secure delivery of property without surrender of bill of lading.

2 T F 96. Contract covering delivery of property and production of bills of lading, limited time.

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* If to be used as an annual bond, insert after the word "until," the following words: "And including the last day of the year first above mentioned."

If to be used for indefinite period, insert after word "until," the following words: "Otherwise agreed in writing by the Southern Pacific Company and the signers hereof."

2 T F 169. Bond for freight stopped in transit.

2 T F 170 (old form). Bond to secure delivery of freight and pay ment of freight charges.

2 T F 269. Request for diversion of freight en route or inspectio at destination.

2 T F 306. Season guarantee.

1. Unused portions of this bond must be erased.

2. When used either as a guarantee alone or guarantee and bon combined, it must in all cases be promptly forwarded to freigh auditor and an impression copy retained by agent.

3. Each signature should be witnessed by person who saw i made and who must sign as witness, stating signature to which he i witness.

585 Q. State what you know about when there is a car shortag over one road that either of these railroads furnishes cars t the other road to be shipped over the other line?

A. Do you mean if there is a shortage of Armour cars whethe the Santa Fe will furnish cars to supply the shortage?

Q. Yes. Where the Southern Pacific runs out of Armour car which runs over its line, what, if any, car does it furnish?

A. Well, you can't ship a Santa Fe car over the Southern Pacifi as a rule.

Q. And the Southern Pacific cars, do they go over Santa F lines?

A. No sir, not generally speaking. I believe there has been e ceptions.

Mr. CALL: I think Mr. Chambers and Mr. Sproule both testifie to that.

Q. Can you give any further—show any further effect of discri ination under the routing rule of the carriers?

A. Well, there is a great demand for Erie service from Chicago t New York, and there is only one firm that could get that—one shi per—positively, by the Southern Pacific. That firm are heavy shi pers of other commodities, on which they control their own routin On Santa Fe shipments there was no trouble in getting Erie fro Chicago and New York. At least, that was my experience.

Q. If they used Erie, then, for the concern you mention, to carr out the percentage table, they would have to refuse that to oth shippers?

A. Well, the object was to take care of the four lines b
586 tween Chicago and Buffalo, the Lake Shore and Grand Trun and Nickel Plate, and Michigan Central. And in that way placed the Erie's competitors in a position to get a portion of th business. In fact, they was creating competition against themselve Their service from Chicago to New York was desired by all shipper because it was quicker and better in every respect.

Mr. CALL: Take the witness.

Cross-examination.

By Mr. DUNNE:

Q. I understood you to say yesterday, Mr. Nadal, that it was in 1896 that you went into the employ of the Southern Pacific. Is that right?
A. January 1st, yes sir.
Q. Was that your first employment in the railroad business.
A. No sir.
Q. You had previously worked for some other company?
A. Yes sir.
Q. What company was that?
A. The Illinois Central prior to that time, from 1892 to 1896.
Q. In what capacity?
A. Well, in revising freight shipments.
Q. Revising freight shipments?
A. Yes sir, freight rates.
Q. You were in the freight department?
A. I was in the freight department and the accounting
587 department.
Q. What was the name of your capacity? What were you called?
A. Revising clerk.
Q. Had you been in the railroad business prior to that?
A. Yes, with the D. & R. G., in Denver.
Q. For how long?
A. Two years prior to that.
Q. In what capacity?
A. Claim clerk.
Q. In adjusting claims?
A. Investigating claims.
Q. Adjusting claims?
A. Investigating claims.
Q. What claims? Freight claims, or personal injury?
A. Loss and damage claims, freight claims, overcharge claims.
Q. Prior to that had you been in the railroad business?
A. Prior to that I was with the Louisville Southern, at Louisville.
Q. For how long?
A. For about a year, couple of years.
Q. In what capacity?
A. General freight office.
Q. Well, but in the general freight office—in what capacity were you there? Some clerical capacity?
A. Yes sir; tariff clerk.
Q. Was that your first experience in railroad business?
A. No sir. Prior to that I was with the B. & O. S. W., in
588 the general freight office, with B. F. Mitchell.
Q. In some clerical capacity?
A. Claim and rate departments.

Q. For how long?

A. Probably—I don't just recall now—about a year, I should say.

Q. Had you been in the railroad business prior to that?

A. Yes sir, connected with the Louisville, New Orleans and Texas, in the local freight office.

Q. In a clerical capacity?

A. About a year, yes sir.

Q. When did you first go into the railroad business?

A. I think it was in 1888.

Q. And you filled these various clerical capacities that you speak of.

A. Yes sir.

Q. And became revising clerk, as you call it, and then went into the employ of the Southern Pacific Company?

A. In 1896, yes sir.

Q. And you went into the employ of the Southern Pacific Company, it was in Chicago, was it not?

A. Yes sir.

Q. In Mr. Neimyer's office?

A. Yes sir.

Q. What was your capacity in his office?

A. Why, general clerk on rates for a while, claims. Had charge of the office in the absence of Mr. Arthur, his chief clerk.

Q. Mr. Arthur was the chief clerk and confidential man of
589 Mr. Neimyer?

A. Yes sir.

Q. And in the absence of Mr. Arthur you fulfilled his functions?

A. A certain portion of his duties, yes sir.

Q. And your duties concerned rates and claims, did they not?

A. Correspondence.

Q. Correspondence.

A. Yes sir.

Q. And from 1896 to 1901, that was about the line of your activity there, was it not?

A. No, that extended to the beginning of the citrus fruit shipments, where shippers took charge of the routing. That was January, 1900, I believe.

By Mr. CALL:

Q. Where the railroads took charge?

A. Where the railroads took charge of the routing.

By Mr. DUNNE:

Q. But from 1900 to 1901, you were still in Mr. Neimyer's office?

A. Yes sir.

Q. And what time in 1901 did you leave the office?

A. Well, the consolidation took place I think the 1st of September.

I was appointed chief clerk of the consolidated offices at Cincinnati, and I went down there for one month, prior to coming out here.

Q. And you left, then.

A. I really left Cincinnati. I went back to Chicago and was there a month in the hospital, and I came——

Q. Well, when the consolidation, as you term it, took place, between the Union Pacific and Southern Pacific, what you
590 have called the consolidation, whatever it may be—I don't pretend to decide that question—when that event happened, you left the office of Mr. Neimyer, is that correct, and got a new assignment to Cincinnati?

A. Yes sir.

Q. And remained in Cincinnati for one month?

A. Yes sir.

Q. And then quit the employ of the railroad?

A. Yes sir.

Q. Under what circumstances did you quit the employ of the railroad? Why did you leave the railroad employ? Will you explain that?

A. Yes sir. I was offered more money somewhere else.

Q. Where?

A. Here in Los Angeles.

Q. In what capacity?

A. In the selling and shipping department of Ruddock, Trench Company.

Q. And how long were you with them?

A. I have been with them ever since.

Q. Are you with them now?

A. Up to the time I went with the agency.

Q. Well, when did you go with the agency?

A. The time that it was formed, April the 1st.

Q. 1903?

A. 1903.

Q. Well, you were with Ruddock & Trench, then, for something over a year? Is that correct?

A. For two seasons.

591 Q. How long were you with the agency?

A. Up until August the 1st.

Q And then you quit the agency?

A. Yes sir.

Q. And what business have you been following since?

A. I have a traffic bureau and handle traffic matters in the interest of different shippers, principally the orange shippers, and the collection of claims.

Q. In other words, you are fostering the collection, prosecuting and adjustment of claims against the railroad companies by these shippers.

A. Of just claims.

Q. Of just claims?

A. Yes sir.
Q. That is your present occupation, and has been since August
A. Yes sir.
Q. Was there any other reason for your quitting the employ
the railroad company except the reason you have suggested here
A. No sir.
Q. Now, the percentage table; you read here yesterday from
copy of the percentage table, as I understood you.
A. Yes sir, it is an abstract.
Q. I think I see it before you.
A. It is an abstract of the percentage table that I had for co
venience.
Q. When did you make that copy?
A. I made it some time while I was in the office
592 Chicago.
Q. In Mr. Neimyer's office?
A. Yes sir.
Q. At the time that Mr. Neimyer and Mr. Arthur and yourse
were there?
A. Yes sir.
Q. Did you make it in the discharge of your duties?
A. Discharge of my duties? I did.
Q. In the office?
A. Yes sir.
Q. And did you use it there?
A. I did, sir.
Q. And for your convenience?
A. I used it at home a great deal of the time.
Q. Well, for the purpose of facilitating the discharge of you
duties, wasn't it?
A. Yes sir.
Q. And did you return it to the office after you quit the emplo
of the company?
A. This memorandum?
Q. Yes sir.
A. No sir. Here is the memorandum.
Q. You have kept it ever since?
A. Yes sir. I found it amongst some of the papers I had.
Q. Have you any other papers, or copies of papers or memorand
or copies of memoranda, that belonged to your employer in whos
employ you were?
A. Well, I had some tariffs, is all. I used to do a great deal
work at home.
Q. But you retain those papers since you left the emplo
593 of the railroad company.
A. Well, I think they are all out of date now, and I hav
destroyed the tariffs.
Q. You have destroyed them?
A. I have destroyed them, thrown them away.

Q. Well, have you any papers now belonging to the railroad company, or copies of papers belonging to the railroad company, besides this percentage sheet that you read in evidence here?

A. I have some of the tariffs. I don't remember whether—some of them are new tariffs.

Q. Why did you not return these papers to the company when you quit its employ?

A. Well, I don't know. I didn't realize that I had them until afterwards.

Q. Well, when did you first realize that you had these papers? How long since?

A. Did I realize that I had these papers?

Q. Yes.

A. Well, I never gave it a thought. When I left Chicago I put a great deal of property in my trunk, and especially the tariffs. I thought I might have use for the tariffs out here. And I found these among my personal effects.

Q. When did you find these papers after you quit the employ of the company?

A. After I quit the employ of the railroad company?

Q. Yes.

A. Yes sir.

Q. Sir?

A. Yes sir.

594 Q. When?

A. I found them out here.

Q. How long ago?

A. When I unpacked my trunk. They were lying around the house.

Q. Well, about how long ago, roughly speaking, was that?

A. Well, two years ago.

Q. Two years ago?

A. Yes sir.

Q. Did you make any attempt at that time to return it to the company?

A. No sir. I didn't think they were of enough importance at that time. The tariffs were public property anyway.

Q. Was that percentage sheet public property?

A. This? No sir.

Q. Was not the information which you acquired in copying that percentage sheet confidential information gained by you during your employment by the railroad company?

A. Well, I presume it was considered so.

Q. Yes. Now, in this percentage sheet that you referred to here yesterday, you read off what I understood to be a table of deliveries as distinguished from a table of percentages. For instances, you would mention some shipper, Southern California Fruit Association, whatever its name would be, and attached to that would be

some expression of final delivery of the shipments. Is that co
rect?

A. That is correct.

Q. Well, now, what is the meaning of that? Does that mea
that those were the deliveries which the company accorde
595 to *to* those shippers?

A. The percentage table embraced three different——

Q. Well, I am just asking you about this one feature of the tabl
the deliveries.

A. Those deliveries at the latter part of the percentage sheet we
delivery lines preferred by the shippers which were accorded to the
when they were able to do so.

Q. In otherewords, the percentage here, so far as deliveries a
concerned, is an expression of preferred deliveries from the stan
point of the shipper?

A. Yes sir.

Q. Accorded to the shipper by the railroad company.

A. Yes, sir, the preferred delivery accorded by the railroads to th
shippers.

Q. And hasn't it been the fact, since the routing was controlle
by the railroad companies, as matter of right or asserted right, tha
the company, as a general proposition, has accorded the preferre
deliveries to the shipper? Hasn't that been the practice?

A. Yes sir. Although we had a number of exceptions which r
sulted in serious losses.

Q. By the way, as to the bond, here, and release, which you pr
duced—those papers, substantially in that form, were used prior t
this routing, were they not?

A. The release?

Q. Yes.

A. Yes sir. I think so.

Q. And, so far as you know, the bond also was exacted?

A. So far as I know. I don't know.

596 Q. Now, do you know what the practice has been of th
company as a rule since January, 1900, with reference to a
cording a given route to a carrier upon his request where the ca
rier has been requested by the shipper to send the commodity alon
a particularly designated route? Have the companies, as a rul
accorded that right to the shipper? In most instances have the
permitted the shipper to send the commodity along that route?

A. No sir. Our experience, when I was with Ruddock, Trenc
was that we could not. In fact, I have got communications he
from the different agents saying they could not allow us our rou
ing. The agent at Oroville: "I have no authority to consign t
routings or deliveries on your shipping orders."

Q. What is the date of that, please?

A. December 3rd.

Q. Signed by whom?

A. Signed by W. H. Dickson, agent of Southern Pacific Company at Oroville, California.

Q. Is that all that there is to that? Read that again.

A. "Mr. Anderson, Ruddock-Trench Company. Dear Sir: I have no authority to consign for routings or deliveries on your shipping orders." Here is another one from the Santa Fe agent at Pomona: "We have certain routings to go by, and as long as you keep within those limits it would be all right. Could explain better if I could see you. J. E. Bowman, agent."

Q. What is the date of that, please?

A. December the first. Here is a letter from the agent of
597 the Southern Pacific at San Gabriel: "Permit me to state replying to yours of 3rd instant, that the conditions of last season still prevail. The railroads reserve the right of routing cars of citrus fruit." November the 27, 1902. Ruddock, Trench, written by our agent at Ontario.

By Mr. NORTON:

Q. Whose agent?

A. Ruddock-Trench Company's agent. He says: "Our agent here"—he means railroad agent—"refuses to let me route the cars on the northern route, saying that everything must go by way of El Paso."

By Mr. DUNNE:

Q. What is the date of that, please?

A. November 27, 1902.

By Mr. NORTON:

Q. What car does it refer to?

A. Well, I think I recall that circumstance. One night in the office, between five and six o'clock, I sold a car, or had a prospect—I don't remember which—of selling that car to a certain party; and I could not get the Southern Pacific office to tell them to send that car via Ogden, and I sent a telegram out to our agent to see that the Southern Pacific routed that car via Ogden, because it was going out that night, you understand. The car went via El Paso.

By Mr. DUNNE:

Q. Now then, apart from these matters that you have read here do you recollect any other instance in which these people were refused the right or the privilege of indicating the route that they wanted their shipments to cover?

A. Well, as I understand it, they never——

Q. Well, I am asking you now for specific instances.

A. Specific instances?

Q. Yes; not generalities.

A. Where they didn't give the routing requested 19207;
598 from Ontario. 10/25/02. I wrote a number of communications on that car, explaining why I was wanting a certain

delivery, and it was rejected. We wanted Erie and Erie Disp from Chicago. The car went by Rock Island, Grand Trunk, Lel Valley, and P. & R.

By Mr. CALL:

Q. Were local rates charged on any of those cars you were sp ing about?

A. Oh no. These are cars where the railroads reserved the r ing. When we found they were charging us local rates, we di insist upon it being placed upon the shipping order.

By Mr. DUNNE:

Q. Did you get Erie delivery on this last car that you spoke

A. Well, it says P. & R.

Q. Do you know? Are you able to say?

A. Well, I got a letter from Mr. Pollock, dated September 1903.

Q. What did that letter say?

A. "Referring to your letter of October 3rd, relative to the r ing on car 19,207, from Ontario, October 25, 1902, same was ro by Texas Pacific, C. R. I. & P., Grand Trunk, Lehigh Valley, P. & R."

Q. Outside of that, do you know whether or not there was an delivery of that car?

A. An Erie delivery of that car?

Q. Yes.

A. No sir, I do not.

Q. Now, did you know of any specific instance during the tr action of the business of the Ruddock, Trench Company, w

599 you were with them, in which the designation of the rou by them was overruled by the company, by either of t initial carriers?

A. Why, I probably could find a number of instances. I hav case on my desk now of a car shipped by and exchange——

Q. I am speaking now of the Ruddock, Trench people. Do recall any other specific instances?

A. I never kept track of them. There was a number of them

Q. Well, do you recall any other specific instance?

A. Yes sir, I remember when they refused our Chicago office Erie from Chicago on a number of cases.

By Mr. NORTON:

Q. Refused what?

A. Our Chicago agent Erie from Chicago.

By Mr. DUNNE:

Q. Do you mean to say that included a refusal of Erie delive

A. No, they turned it over to the Erie at Buffalo.

Q. Now then, do you recall any other specific instances?

A. Yes sir, I remember a car into Milwaukee in which we asked for Wisconsin Central delivery. They told us they had no divisions with the—it was some point in Wisconsin, now; I won't say Milwaukee.

Q. They had no through tariff?

A. They had no division with the Wisconsin Central, but we wanted it by Santa Fe anyway and we could not get it by the Santa Fe. The Santa Fe had divisions that way.

Q. Now, do you recall any other instance?

A. When I first came out here we had difficulty at Salt Lake. We asked for D. & R. G. delivery, or Rio Grande Western delivery, and they were putting them in there over the Union Pacific.

600 They afterwards modified that.

Q. Yes, they afterwards modified that?

A. Yes sir.

Q. Now, what was the extent of the business carried on by Ruddock, Trench & Company when you were with them? Did they make many shipments during the season?

A. Oh, the shipments varied. Sometimes it would be twenty-five cars a day. They made about 3,000 cars, I believe, during the time I was with them.

Q. You were with them for two seasons?

A. Yes sir, about two seasons.

Q. How long did each season last?

A. Well, they strung it out——

Q. Well, about? Just roughly.

A. Well, we are shipping the whole twelve months. I don't remember any time that we was not shipping something.

Q. Well, you have spoken of a period of time when they shipped so many cars a day?

A. Well, the shipments were after the 1st of January, February, March and April.

Q. January, February March and April?

A. Yes sir. This year we shipped a great many in December from northern California.

Q. Well, I am speaking now of Ruddock, Trench & Company.

A. Yes sir. I mean Ruddock, Trench.

Q. And during these months of heavy shipments—you were with them for two seasons—they shipped 25 cars a day?

A. Some days we had that many manifests.

Q. And that volume of business continued for some three

601 or four months?

A. No, I won't say they averaged that, but it would come, some days 12, perhaps.

Q. Some days twelve, some days 25?

A. Yes sir.

Q. Did they ever ship more than 25?

A. I don't think we ever did. We had about 26 packing houses, I think. It was possible to run a little more than that.

Q. Those people, then, did a great deal of shipping and a great deal of routing. Is that the idea?

A. Yes, well, we didn't attempt to route. It was too uncertain to attempt to route a car.

Q. You didn't attempt to?

A. In most of the cases, in the general shipments, you are speaking about?

Q. Yes.

A. We waited until we got the routing. We made a number of requests and we found out we could not have it, and so we didn't waste the time.

Q. Now, what I want to know is whether in that volume of business which those people transacted, and as a rule affecting their business, the initial carriers didn't accord to them the routing that they suggested?

A. Well, I should say that if we had requested a routing on every one of the cars we shipped, we would have had them all turned out.

Q. Well, I am not asking you that question. I ask you, as a general rule or general practice, with these people transacting
602 that volume of business, whether as a rule and practice they were not accorded the routing that they suggested?

A. That we suggested?

Q. Yes.

A. No sir.

Q. Have you any recollection upon the subject as to the company insisting upon special routings, over and above the specific instances that you have brought to our attention here? Can you give us any further specific and definite information as to the company insisting upon a routing as against the wishes of that particular shipper? Specific instances over and above what you have mentioned here?

A. Well, as I say, I didn't keep track of all the cases where we were refused the information, and I didn't request it on a very large percentage of our business because it would discommode us in the handling of it.

Q. Is that true of the great percentage of the business, that last remark that you made?

A. I say I didn't request it on the great percentage of the business, because it was uncertain; when a car was started, it was uncertain to ask them for a certain delivery because we never knew where our cars were, where to locate them. For instance, if we wanted to stop a car at Denver we would not know whether it was in transit eight days to Ogden or five days to Ogden. Consequently, if we placed any special delivery on there the car might be by Ogden and we could not get the delivery requested. That would merely interfere with the handling of the car under those circumstances.

603 Q. Now, you have stated that the companies had made exceptions in the matter of according the privilege of rout-

ing in favor of certain shippers. Did you make that statement here? Did I understand you correctly?

A. Yes sir.

Q. Now, when were these exceptions made? In what season?

A. The season of 1900 and 1901.

Q. And who are the shippers in whose favor those exceptions were made?

A. I would not like to say.

Q. Why not?

A. I have reasons for it.

Q. Well, what reasons have you? Is it that the knowledge came to you confidentially and you do not desire to violate information that comes to you confidentially? Is that the reason?

A. No sir.

Q. Well, what is the reason?

A. Well, I have no particular reason. If you want to know the firm name, it was Porter Brothers.

Q. Porter Brothers?

A. Yes sir.

Q. How did you become aware that exceptions were made in their favor?

A. Because I fought it.

Q. In how many instances were exceptions made in their favor?

A. Well, we had instructions to give them certain rout-
604 ings, never question their routings.

Q. Who had instructions?

A. Mr. Neimyer's office.

Q. How did you know that? How did that knowledge come to you?

A. How did it come to me?

Q. Yes, that Mr. Neimyer's office had instructions to give these people certain routings, or not to question their routings?

A. Well, I don't know whether it came up through the fact they were putting in diversions there and I was changing them and they made complaint about it.

Q. Well, is that the way in which you acquired knowledge upon the subject, while you were employed in Neimyer's office?

A. I think we had some correspondence with Mr. Sproule and Mr. Luce. I have forgotten the details of that.

Q. Have you preserved copies of that correspondence too?

A. No sir, I have not. It is a matter of record in those offices, I suppose.

Q. Now, when did that occur? What year?

A. I think it was 1900.

Q. Then the sum of that is that while you were in that office certain routings were permitted to these people, Porter Brothers, routings that they had been accustomed to use? Is that correct?

A. Well, they got Erie service from Chicago to New York.

Q. And they had been having that service previously, had they not?

605 A. On oranges?

Q. Yes.

A. I presume they had.

Q. Now, do you know of any other exceptions in which certain shippers were permitted to designate routings?

A. No sir, I don't recall.

Q. Those are the only exceptions you have in mind, are they?

A. What do you mean those are the only exceptions?

Q. Where certain shippers were favored in the matter of being accorded routings?

A. They first wanted to make exceptions throughout the Northwest Territory. I combatted the proposition.

Q. No; I am asking you the specific shippers?

A. Well, that is the only shipper that the exception applied to.

Q. You also gave a specific instance in your testimony of an orange train of 250 cars being held up and a train of empty box cars being allowed to go through. When did that happen?

A. I have got the telegram here from our agent. It is Fruit Growers and Shippers Association agent to members of the association, report from Albuquerque January the 22nd: "250 cars of perishable lying in yards at Las Vegas waiting power."

By Mr. CALL:

Q. Who is that signed by?

By Mr. DUNNE:

Q. What is the date of that?

A. January 26th, I think it is. The date is blurred.

By Mr. NORTON:

Q. 1900?

606 A. 1903. Here is: "November 27th, 1902," telegram from our agent at Albuquerque.

Q. Who is he, please?

A. A. C. McCann.

Q. Agent of Ruddock, Trench?

A. Yes sir. This train was ordered 11/26. Reports car 2,490, "This train was going out at 8.50 a. m., but when train was all made up and conductor had bills, orders came to give all empty cars (box) preference movable. This left oranges here until 3 p. m., nine hours delay."

By Mr. DUNNE:

Q. Are you speaking now of the same transaction?

A. No, that was in January. This was in November, 1902.

By Mr. NORTON:

Q. November what?
A. November 27th, 1902.
Q. From the same agent?
A. Yes sir.

By Mr. DUNNE:

Q. What do you state that transaction to be? That in the movement of certain commodities some oranges were held up and some box cars were allowed to pass through, and that necessitated a delay of some hours? That is the transaction as you mean to convey it?
A. They give the preference to the competitive traffic, in getting those box cars back East for loading west-bound traffic.
Q. Well, you mean to say that in that particular instance the oranges were held up and the empty cars were allowed to go through?
A. Yes sir; that is what it says.
607 Q. And that delayed the orange traffic for some hours?
A. Nine hours in that one instance. He doesn't say how long in the other.
Q. Now, you were connected with the Southern California—with the California Fruit Agency, were you not?
A. Yes sir.
Q. For how long?
A. For four months.
Q. In what capacity?
A. Transportation agent.
Q. The transportation agent. What were your particular duties? Were any shipments made while you were there by the California Fruit Agency?
A. Yes sir, several thousand cars.
Q. Were those the first shipments that agency made?
A. How?
Q. When did that agency begin to ship?
A. April 1st.
Q. Of 1903?
A. Yes sir.
Q. And you were with them from April until August, I think you said?
A. Yes sir.
Q. And during that time they shipped several thousand cars?
A. Yes sir.
Q. Will you explain their method of shipping?
A. Explain their method of shipping?
Q. Yes, and getting oranges into the market; how they
698 marketed the product while you were there.
A. Well, they have a certain quantity of agents, and they

work through brokers. I think they have about fifty agents and brokers in all.

Q. Now, explain that a little more fully, please, in detail. Tell us where the agents are and what their functions are and how the agents and the California Fruit Agency operate between themselves to secure the marketing of their product. Will you go into a little detail about that?

A. Well, they sell in different ways. They sell delivered and f. o. b.

Q. Well, I am speaking now about their agents?

A. Their agents?

Q. Please explain that a little more fully, where they have them, why they have them, and what the duties of those agents are.

A. Those duties are to sell the oranges to the trade. They have territories that they work in.

Q. These agents are assigned to territories?

A. Yes sir.

Q. And what extent of territory with reference to the market for oranges in this country? Are they distributed over the market for oranges in this country, these agents?

A. These agents endeavor to distribute it the best they can.

Q. Well, no; I am speaking about the agents themselves. Are those agents distributed or assigned to portions of the entire territory?

A. Oh, they are assigned certain territory.

609 Q. Certain territory. And do you say they have got a number of agents?

A. They have fifty agents and brokers, in all. I think there is about 35 agents.

Q. What is the object of having so many territorial agents?

A. To make the best disposition of the property.

Q. To cover the ground fully? Is that the idea?

A. Yes sir.

Q. Now then, what are the duties of those agents?

A. Those agents are to inspect the fruit, get sales for it.

Q. Well, have they any duties to perform before the fruit reaches their particular territory?

A. They are to get offers on the property.

Q. And ascertain the condition of the market and the demand? Is that the idea?

A. Yes sir.

Q. And when they ascertain the condition of the market to which they are assigned, and the demand, do they communicate that to the California Fruit Agency?

A. Yes sir.

Q. And then the company forwards an amount of product responsive to that demand?

A. Yes sir; they endeavor to do that.

Q. Now, what is the object of that?

A. What is what?
Q. What is the object of marketing in that way?
A. Well, it is to properly distribute the fruit.
610 Q. Prevent overcrowding?
A. Prevent overcrowding the markets.
Q. And how long has that system of marketing the citrus product been in use here in California, do you know?
A. Well, that has always, as I understand it, been the policy of the exchanges in selling their fruit.
Q. Well, to what extent was the marketing done by the California Fruit Agency in that way? Did it cover a large extent of the shipments?
A. The California Fruit Agency?
Q. Yes.
A. I think I figured up there at times they would have 75 per cent. of it.

By Mr. NORTON:

Q. Of the southern California business?
A. Of the southern California business.

By Mr. DUNNE:

Q. Well, they took in the northern business, too, didn't they?
A. They will this season, yes sir.
Q. And that is to be marketed in the same way, on the same principle?
A. Well, they have made some modofications in their marketing plans. They sell f. o. b., and for cash, and delivered.
Q. Prior to the establishment of the California Fruit Agency, did the exchanges have any other way of marketing the product?
A. The exchanges?
Q. Yes. That is to say, would they send the oranges into the market to some fictitious destination? Was that done?
611 A. The exchange controlled about one-third of the product, and I think they adopted the plan of sending cars to certain markets and having the agents dispose of it or divert it.
Q. Well, was the plan followed of consigning the product to a fictitious destination and then disposing of it in between?
A. Well, it is fictitious in a way. You can't get a receipt from the railroad without showing a designation.
Q. Some destination was——
A. Some destination must be placed upon your property, for it is all unsold.
Q. But it was by no means certain that the property would ever reach that destination?
A. Ever reach that destination.
Q. It might be sold in between times?
A. Yes sir.
Q. Well now, what practice did they follow, this exchange con-

trolling the fruit product, in order to accomplish a sale in between times? Do they send out circulars to the jobbers?

A. I don't know the exchange method of selling fully, but I am acquainted with the shippers' method of selling. They represented about two-thirds of the property.

Q. Yes. What was their method of selling?

A. Well, we used to notify the trade through our agents and brokers of cars that we had in transit.

Q. Exactly.

A. And they would get offers for it.

612 Q. You notified them by sending circulars?

A. By telegraph and by circulars.

Q. By telegraph and by letter?

A. Yes sir.

Q. Did the shippers follow the practice at that time of having agents in local territories who would advise them as to the condition and the demand?

A. They had brokers.

Q. Brokers?

A. Yes sir; small territories where it would not justify the employment of a salaried agent.

Q. Well now, under the system adopted by the California Fruit Agency of having agents in the different territories, the idea is to ascertain through these agents the demand for the product in a given territory and ship to that territory so much as will be responsive to the demand and avoid flooding or overcrowding the market? Isn't that the theory of it?

A. That is the theory.

Q. And the California Fruit Agency is in position to make that effective, is it not, by reason of the fact that they control a very large percentage of the output? Well, I will ask you as a matter of fact if they don't control a very large percentage of the output of the citrus business of California?

A. They control a large percentage of it, yes sir.

Mr. DUNNE: I think that is all.

By Mr. NORTON:

613 Q. I have a note here, Mr. Nadall, of a statement made by you yesterday—I may not have it straight—that since the reservation of the right to route by the initial carrier the shipments have been made of your fruits over congested lines?

A. Yes sir.

Q. I wish you would name instances in which that condition has occurred—congested connecting lines?

A. Here is a telegram from our agent at El Paso, dated December 20th, 1902, in which he gives the list of cars. There is eleven cars. He says: "The following cars were reported received December 6th, forwarded over C. R. I. & P. December 7th, delayed on account of shortage of motive power."

Q. Delayed where?

A. El Paso. These cars were shipped on December 1st. That means seven days to El Paso.

Q. Well, the delay was between here and El Paso?

A. That is part of the delay. Then, on account of no motive power, they were delayed in the possession of the Rock Island.

Q. That does not say so, does it?

A. No sir, but I recall.

Q. Well, what is the information you have there that you have read from? Where was the delay, and what caused it?

A. Well, I read the telegram. It reads: "The following cars reported received December 6th, forwarded over C. R. I. & P. railroad December 7th at 2.15 a. m. Delayed account of shortage of motive power." And then it enumerates the different car numbers of the different shipments.

Q. Well, where was the delay?

614 A. Well, he mentioned they were delayed at El Paso from the 6th.

Q. And where was the shortage of motive power? On the Southern Pacific or Rock Island?

A. Rock Island.

Q. That does not appear from the telegram, does it?

A. No sir, but I recall that they held a lot of our cars.

Q. Where did you get the information?

A. We got it from our different reports, different times, that they held a lot of our cars and then turned them over to the T. & P.

Q. What routing had you asked for on those cars?

A. I don't recall that we asked for any routing on those cars.

Q. Then the delay was not occasioned by giving routing that you didn't want.

A. No. We didn't make a practice of requesting routing on our general shipments because it only delayed the shipment.

Q. You stated also that they refused to give the joint rate and the routing, yesterday. What do you mean by "they"? The initial carriers here?

A. They refused to give what?

Q. They refused to give the joint rate and routing. That was the statement you made yesterday.

A. I don't recall that statement.

Q. Well, to whom did you refer by "they"? The initial carriers here? Is it a fact that the initial carriers in California, southern California, the defendants here, refuse to give the joint rate and the routing?

615 A. On the shipping order.

Q. At the same time?

A. Yes sir.

Q. Would they have given you the routing if you had waived or done without the joint rate?

A. They would in exceptional cases. Not as a general rule.

Q. Would they have given you the routing if you had paid th sum of the rates?

A. Sum of the local rates?

Q. Yes.

A. Yes sir, I think they would.

Q. But they wouldn't give you the routing and give you th through joint rate, and guarantee the through joint rate also. I that what I understood you to say?

A. Yes sir; they wouldn't endorse the shipping receipts or bill of lading with the through routing on them.

Mr. NORTON: I think you have been examined as to the state ments made in regard to exceptions made in favor of certain ship pers.

Mr. DUNNE: Yes.

By Mr. NORTON:

Q. Now, you stated that there was no incentive for connecting lines since the reservation of this right to route by the initial car riers—no incentive for connecting lines to make speed; that they would get their percentage regardless of service; that the initia carriers could not criticize their connections; and that the carrier refuse to settle claims. Taking up the first of these statements, how do you figure out that there was no incentive for the connect
616 ing lines to make speed?

A. Because they were enjoying prosperous competitive business and it tested their capacity and they realized they got thei percentage of the orange traffic anyway, so naturally I should think they would give the preference to competitive business.

Q. You argue that a certain line, for instance the Erie, one you have mentioned frequently, next east of Chicago, if it were to give slow service would get the business anyway?

A. No sir.

Q. If it were to give inferior service, cause loss to the shippers and delay the cars of these initial carriers, do you think it would get the business anyway?

A. No sir, we would not want them to have it.

Q. The initial carriers would likely take it away, take away the proportion from the Erie that it had been receiving?

A. If the Erie gave poor service?

Q. Yes.

A. Well, I don't know of any instance where they did take it away from a portion of the line for poor service.

Q. Well, in your experience in the division of business, which you have testified about here this morning, do the initial carriers deal in that way with the connecting carrier when the connecting carrier gives bad service?

A. I should say they did on general traffic.

Q. As a matter of fact, that is the only way of punishment that

the initial carrier has to command good service by its connections, isn't it?

A. Yes sir.

617 Q. And that in practice if the connecting carrier gives bad service it quickly follows that it loses the business apportioned to it?

A. Yes sir.

Q. Then there is an incentive for connecting carriers to give speed?

A. On competitive business.

Q. This is competitive business that we are discussing, isn't it?

A. Well, I thought you was discussing the orange business.

Mr. CALL: I think the witness has not understood the drift of your questions at all.

Mr. NORTON: I think he did.

Q. The orange business is competitive business, isn't it?

A. No sir.

Q. As far as the connecting carriers are concerned?

A. No sir, I don't consider it so.

Q. Why not?

A. Because they cannot solicit business.

Q. Cannot solicit business?

A. No sir.

Q. But if there are seven or eight lines out of Chicago, between Chicago and the Atlantic coast, and one of those lines uniformly gives better service than any of the other six, will not that line, by reason of that better service, receive a larger proportion of the business?

A. I have not seen that to be the case.

618 Q. In your experience in regard to this division of business, about which you testified, have you noticed whether a carrier that gives poor service, slow time, and is slow about settling claims against it is given the same privileges as a carrier that is rapid in its transit, prompt in its settlements? Do you mean to say that?

A. I mean to say that there has been generally bad sercive on all the lines.

Q. Please answer my question. Read the question. (Last question read by the reporter.)

A. I mean to say that carriers giving the best service will get the business.

Q. That is it.

A. But there is very little difference in the service of any of the lines, with few exceptions.

Q. Well, I am not asking you about that. We are assuming that there would be difference in the service.

A. If it was competitive.

Q. Yes. Now, suppose the arrangement of division were not in

existence, and all of the shippers in this Southern California territory were to ask for Erie delivery to the East. Do you suppose the Erie Company could carry all the business?

A. I am not able to say. They have been able—I think they would.

Q. What would you say as a practical man, railroad man or shipper, if you are, as to its becoming congested, unable to handle it?

A. There is a possibility of it becoming congested. But they make a specialty of that kind of business.

619 Q. Well, there is a limit to what two rails can carry, you understand, do you not?

A. Yes sir, I suppose there is.

Q. As a practical proposition, if all the shippers of southern California were permitted to bill their fruit east over the Erie, it would, in all probability, be unable to carry the business, with its other business? There would be congestion and delay.

A. Well, all of the fruit—do you mean——

Q. Yes.

A. I don't know but what the Erie could take care of the New York business over its own rails, if it was given—if it was understood that it was to handle it all. Don't you think they would make provisions for it?

Q. Well, I am not answering the question.

A. Well.

Q. With its present provisions. My question relates to the present situation, if it were all to go by any one road east of Chicago, that road could not handle it with expedition?

A. Perhaps not.

Q. Well, is that your opinion, that it could not?

A. Well, I don't know, really.

Q. What is your opinion about it, now, as a man who has been distributing this kind of business for a good many years?

A. I don't know what the entire facilities of the Erie railroad are.

Q. Any railroad, any eastern railroad except the New York Central, we will say, which has four tracks; any of those eastern roads.

620 A. But you take the aggregate orange shipments to New York. I believe that one line could handle them.

Q. Not very well, you don't think, do you?

A. If they made a specialty of the business.

Q. No, it is not making a specialty. I am putting the question as to its present situation. If that business were to be thrown upon any single line, it could not handle it at the present date?

A. Perhaps they could not if they handled all the other traffic that they have.

Q. That is it exactly. You think they could not, don't you?

A. Yes sir.

Q. Now, as a man experienced in this distribution of traffic, don't you think that it is better for the initial carriers who know the

carrying power of their respective connections to divide this business on some such basis as you have illustrated here, rather than to allow all the shippers to apportion it over the connecting lines at haphazzard and by guess?

A. Well, from the results obtained while they have had it, I should say no.

Q. If practically carried out, is not this arrangement that you have testified to the more practical business proposition?

A. No sir, I don't think so.

Q. Explain why not?

A. Because there is certain conditions in the fruit business
621 that makes it wholly impossible for carriers to route their fruit and market it properly. I have recited a number of cases where we have——

Q. Just illustrate that.

A. We don't have time, when a car is loaded and packed, to communicate with the railroad and wait twelve hours or more to find out how we can send it. The offices are closed, the cars are pulled out in the night.

Q. That is, on the tramp cars you are speaking of?

A. Yes sir.

Q. What proportion of the traffic is by tramp cars?

A. Well, the greater portion of our traffic were tramp cars.

Q. Well, what proportion?

By Mr. DUNNE:

Q. You are speaking of Ruddock, Trench Company?

A. Yes sir.

By Mr. NORTON:

Q. What proportion of their traffic was sent in tramp cars?

A. Well, I would say sixty per cent. of it.

Q. What proportion of the Southern California is sent in tramp cars?

A. It is all tramps.

Q. The Southern California Fruit Exchange?

A. Yes sir.

Q. I mean the territory, the southern California territory, what per cent. of its traffic goes in tramp cars?

A. I don't know. Seventy-five per cent., I should say.

Q. A witness yesterday stated not over twenty-five.

Mr. CALL: I don't think so.

Mr. NORTON: He so stated.

622 Mr. CALL: Well, that was owing to a misapprehension on his part, of the term, you remember.

By Mr. NORTON:

Q. About seventy-five per cent. of the Ruddock, Trench traffic went in the tramp cars.

A. All the traffic that goes out of southern California, seventy-five per cent. of it is tramp shipment. And under the new arrangement it practically all is.

By Mr. DUNNE:

Q. When you speak of the new arrangement, you mean this arrangement of territorial agents.

A. Yes sir.

Q. And you call that tramp cars.

A. Tramp.

Q. Under that system.

A. Yes sir, as we have it shipped.

Q. I ask you that so that there will be no confusion about what you mean when you speak of the tramp cars.

A. Yes sir.

By Mr. NORTON:

Q. You mentioned one case where you had trouble and delay in getting the information as to the route from Colton; went out of Colton at night and you were not informed until the next day what the routing was. Was not that early enough?

A. Well, sometimes it would be early enough and other times it wouldn't. We might the night before have had a telegram coming in. We had an operator in the office receiving tefegrams all minutes of the day.

Q. Where a tramp car goes out you cannot divert it for two or three days.

A. I know it. But if the car goes via El Paso and we want to send it to Spokane or Butte, we cannot get at it.

623 Q. When you want a car to go to Spokane or Butte, why don't you send it to one of those places?

A. Because we never consign our fruit to any shippers. We have to have it sold in transit.

Q. I know, but you have to send it to somebody at some definite place, do you not?

A. Well, we don't know before it is sold that we want it to go there.

Q. Answer my question. Read it. (Last question read by the reporter.)

A. We send it in a direct line for the central markets. If we would send it on to Spokane for instance, it would be an off route.

Q. Well, answer my question. Every tramp car is sent to Ruddock, Trench & Company at some named destination, isn't it?

A. Some central destination for central markets.

Q. Well, some named destination.

A. Yes sir.

Q. Now, why couldn't you name Butte?

A. Because it is out of the route for central markets. We don't

know we are going to sell it there when it is first shipped. We may not have an inquiry for it.

Q. Well, could you send it to Chicago by way of Butte?

A. No sir, we could not.

Q. Why?

A. Because it would be local rate.

Q. How is that?

A. It would be subject to local rate.

Q. Couldn't it be diverted?

624 A. No sir.

Q. Send it to Butte and then divert to Chicago?

A. No sir, not on through rate.

Q. Don't you get diversions on the through rate?

A. Not to Butte, Montana.

Q. Why not to Butte?

A. It is off the route.

Q. Off the eastern route?

A. Yes sir. There is no division via Butte to Chicago, as I understand it.

Q. How much do you ship to Butte?

A. About 300 carloads a year.

Q. What rate is given?

A. I think it is a dollar and a quarter.

Q. Dollar and a quarter from southern California to Butte?

A. I think so. There are some of those towns up there that take an arbitrary, but I think this is a dollar and a quarter point.

Q. Now, in the matter of routing the cars, it has been the practice to allow the shippers, when a tramp car is sent out, to name the cities through which it would like to have it pass.

A. They started out with that practice, but they cancelled it.

Q. Isn't that in force today?

A. No sir.

Q. When was it cancelled?

A. It was cancelled before I left the Southern Pacific.

625 Q. In Chicago?

A. Yes sir. They used to allow us to designate the towns through which we wanted it to pass, and by doing so it defeated the object of their routing their cars, so they cancelled it.

Q. Well, they allowed you to designate given cities through which you would like to have it pass?

A. They did at first.

Q. Within the circuit of the joint rates.

A. Through rates.

Q. Yes.

A. But then they cancelled it when they found out that they could carry out their routing.

Mr. CALL: You mean the railroads cancelled it?

A. Yes sir.

By Mr. NORTON:

Q. Do you know whether that is in effect today or not?

A. Do I know whether it is in effect today?

Q. Yes. Isn't that in effect today on the Santa Fe line? Can't you name the cities through which you would like to have it pass?

A. I can't say as to the Santa Fe, because the same trouble don't arise as to shipments by the Santa Fe.

Q. The Santa Fe has never revoked it to your knowledge, has it?

A. No; I didn't know it was in existence.

Q. The rule, then, is still in force, so far as that is concerned. Can you say whether it is not in force today on the Southern
626 Pacific, provided the town mentioned is touched by two or more lines?

A. They modified their previous instructions.

Q. Answer my questions directly, please.

Mr. CALL: Allow the witness to answer in his own way.

By Mr. NORTON:

Q. Well, I am entitled to a direct answer to my interrogatory if it is capable of being so answered. Then he can wander as far as he pleases.

A. I don't think it is permitted today.

Q. What do you know about it?

A. Well, I have never tried it lately.

Q. You have no positive information on the subject?

A. No sir, but they declined us the routing, and as long as we are declined the routing we could not have that privilege.

Q. But that is another story. My question was about the choice of towns through which you can have a tramp car go.

A. Well——

Mr. NORTON: I believe you brought out that the bond and release were required before.

Mr. DUNNE: Yes.

By Mr. NORTON:

Q. You stated that the Santa Fe agents somewhere had told you that he would let you give the routings if you would keep within the routing system.

A. Under the percentage table, I suppose he means.

Q. Well, that means where the joint rates apply. Is that what you understand it to be?

A. No sir, I didn't.

Q. What do you understand it to be?

627 A. I understand if we keep within the percentage limits.

Q. How is that?

A. If our request for routings will keep within the percentage limits of its table.

Q. That he would give you the route?

A. He would give us the route. But if we all requested that routing he could not keep within the limits of it.

Q. Then, there would be congestion and delay. Is that what you mean?

A. I don't know as to that, until after it is put to a practical test.

Mr. NORTON: I think that is all I want to ask.

By Mr. DUNNE:

Q. When did the Santa Fe agent make that statement to you?

A. December the first, 1902.

Q. Did he make it to you in writing?

A. Yes sir, he made it to our agent in writing.

Q. Have you got that writing?

A. I have got the signature here; J. E. Bowman, agent.

Q. Will you read it, please?

A. "We have certain routings to go by, and as long as you keep within those limits it would be all right. Could explain if I could see you. Lordsburg, December 3rd, 1902. J. E. Bowman, agent."

By Mr. NORTON:

Q. Read what that is in answer to.

A. "Please let me know at your earliest convenience if you intend to route our orange shipments and if our requests for special routing will be observed if we pack at your point this season."

628 By Mr. DUNNE:

Q. Isn't that an expression of the general rule, practice and understanding, by the initial carriers in this territory with respect to shipments? That was the general position the initial carriers took, is it not?

A. That they would give us our routings if we would keep within a certain limit?

Q. Yes.

A. Well, yes; but that would defeat the——

Q. Well, I am not asking you to argue the matter. You say yes. That was the general position of the initial carriers?

A. Yes sir.

Q. The only initial carriers were the S. P. and Santa Fe. Is that right? Southern Pacific and Santa Fe, the defendants here?

A. Yes sir.

Q. They are the initial carriers. Now, I want you to explain what you mean, or what is to be understood, by keeping within the percentages.

A. Well, they make a table of percentages.

Q. Exactly. Now, let me ask you was this the position: that so

long as the routing designated by the shippers accomplished a distribution of freight among the connecting lines in the proportions indicated in the percentage table, the privilege of routing would not be denied. Is that what you mean to convey?

A. Yes sir, but that could not be done.

Q. Well, I am not asking you about that. Now, I ask you the question of whether the effect of distributing the business among a number of connecting lines in the ratio of percentages—

629 whether that does not operate to prevent congestion of traffic?

A. It has not.

Q. Well, I ask you if that is not the natural effect and consequence of such a distribution of traffic?

A. Well, I don't know. I think there is railroads enough to take care of the traffic.

Q. Well, haven't you said here that unless the Erie railway discarded some of its general traffic it could not handle the entire citrus traffic?

A. In the present handling?

Q. Yes.

A. Yes sir.

Mr. DUNNE: That is all.

Mr. NORTON: That is all.

Redirect examination.

By Mr. CALL:

Q. When the defendant railroad carriers first put into effect the routing regulation, reserving the right to route, did the shippers generally after that demand routings, or at that time did they allow the railroads to route?

A. Well, some shippers demanded routings; that is, their requests. You see, at the time it was first inaugurated——

Q. When it was first inaugurated, and from that on, in the course of the next year.

Mr. DUNNE: I want it to be understood that unless it appears that he has personal knowledge and is speaking from personal knowledge——

Mr. CALL: I am asking him in regard to his knowledge

630 and experience here.

A. The shippers will send diversions to the office with certain routings stipulated. I would invariably change that routing.

Q. That is, when you were in the Southern Pacific employ?

A. Yes sir; I would follow that percentage sheet that I had.

Q. Well, you referred to some several requests for routings that were refused here. That was during the last year, the present year, was it not?

A. The past. Well, I think all, likely, in this season's business.

Q. Since the order of the commission was made, or before?

A. Well, most of them before.

Q. And you have stated, I believe, that when you ascertained that you could not get the routings and that local rates were applied, that then you ceased to demand routings?

A. Yes sir.

Q. And that that was the reason why you did, because they applied local rates?

A. Yes sir. They tied up our shipments with several hundred dollars overcharge.

Mr. CALL: That is all.

E. M. NADAL.

Adjourned until 2 o'clock p. m.

631 OCTOBER 20TH, 1903—2 o'clock p. m.

The EXAMINER: It is hereby ordered by the special examiner and commissioner that the hearing in this case be and hereby is adjourned from day to day until the documents called for by the complainants have been produced or until reasonable notice of resuming such hearing has been given.

632 Testimony taken before Alton M. Cates, special examiner and commissioner in the above entitled cause, this 29th day of October, 1903, at room 308, Currier building, Los Angeles, California, pursuant to notice.

Present: Joseph H. Call, special assistant United States attorney; Frank C. Flint, attorney for Southern Pacific Company; T. J. Norton, attorney for the Atchison, Topeka & Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, and Southern California Railway Company.

And thereupon the following proceedings were had:

Mr. CALL: I notice an error in offering portions of the record before the Interstate Commerce Commission. I offered testimony of witness Naftzger indicated by pencil marks at pages 5 to 26 inclusive, and at page 97, in volume 3 of testimony taken in 1900. I find that by an error, a typographical error, that his testimony is stated to be in volume 3, whereas, in fact, that testimony is in volume 4, and there is indicated by pencil marks at pages from 5 to 26; and I wish to offer, in lieu of the former offer, so much of the testimony of Naftzger as is found at pages from 5 to 26 inclusive, in volume 4, of the testimony taken in 1900.

633 W. G. BARNWELL, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposed as follows:

Direct examination.

By Mr. CALL:

Q. By a *subpœna duces tecum*, issued on the 27th instant, you were directed to bring with you certain papers and documents. Among those papers, you were directed to bring with you the joint tariff of the defendant railroads in this case, being the east-bound joint tariff of class and commodity rates effective November 15th, 1899. I will ask you if you have that tariff.

A. I haven't it with me. We have only one file in our office, which we use as a working file, and I didn't think that you wished me to break up our working file, so I telegraphed to Mr. R. H. Countiss, who publishes the tariffs, and am informed by him that they are in the mail and should reach me today, when I will turn it over to you.

Q. Was that tariff introduced in evidence before the commission, do you remember?

A. I think it was. I will not say definitely, but I think it was.

Q. You will file that with the examiner as soon as you get it, will you?

A. Yes sir.

Q. Now, you were asked to bring with you the joint tariff effective January 18, 1900.

A. I would say the same in reference to that tariff that I
634 have in reference to the joint tariff of which I have just spoken.

Q. And you will bring that in as soon as you can get it?

A. Yes sir.

Q. Have you a copy of the present east-bound joint tariff of defendant railroads with other roads?

A. Yes sir.

Q. Have you it there?

A. Yes sir.

Q. Please let me look at it.

A. (Witness hands document to counsel.)

Q. This is what is called the citrus fruit tariff, is it?

A. Yes sir.

Mr. CALL: Well, I offer this tariff in evidence, to be marked "Complainant's Exhibit No. 11."

The document last offered in evidence is as follows:

635 (In red ink at the top of the exhibit appears the following: "Santa Fe system" Tariff No. 5930–D Divisions: Apply "Santa Fe system" percentage sheet 3046 and 3151 series.

See also list of system percentage sheets under item 31 of S. F. system percentage sheet 3046 A for other divisions. P. H. Goodwyn, G. F. A., G. C. & S. F. Ry. Galveston, Tex. C. W. Cook, A. G. F. A., A. T. & S. F. Ry., Topeka, Kansas. 50 Topeka, Kansas, July 24, 1903.")

Supersedes East-bound Special Tariff S. R. 383.

I. C. C. No. 279.

Supersedes I. C. C. No. S. R. 395.

Trans-continental Freight Bureau.

East-bound Special Tariff.

Effective July 20, 1903.

This tariff contains the individual rates, rules and regulations of each company, respectively, and is subject to change by each company without the consent of any other company whose name appears hereon.

Applying via

Southern Pacific Company (Pacific System),

Vis Ogden, Utah, Mojave, Cal., or El Paso, Tex.

Union Pacific railroad,	Achison, Topeka & Santa Fe Ry.
Denver & Rio Grande R. R.,	(coast lines),
"El Paso-Rock Island route,"	Texas & Pacific railway,
Southern Pacific Company (Atlantic system),	
Santa Fe system, (via Bakersfield or Barstow, Cal.)	
Southern California railway.	Atchison, Topeka & Santa Fe Ry.
	(coast lines),

636 In connection with roads named on page 2 hereof.

Citrus fruits, carloads (min. wt. 26,000 lbs),

from

The following "Pacific Coast terminals," viz:

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), Richmond, San Jose, Los Angeles, San Diego, and National City, Cal., Portland, East Portland and Albina, Ore., and "Intermediate points" (as shown in circular No. 16-B (I. C. C. 218), amendments thereto or reissues thereof).

to

Points located on or east of the western boundary of Missouri river common points territory and points east thereof on roads with which an agreed basis of divisions is in force, within the following territories:

New York, Boston and common points; Pittsburgh, Buffalo, a
common points; Cincinnati, Detroit and common points; Chica
and common points; Mississippi River common points; Missou
River common points and points west thereof.

(As described more fully on pages 2 to 26 inclusive, of east-bou
tariff No. 3–D (I. C. C. 195), amendments thereto or supersedi
issues thereof).

The joint tariffs and rates herein named are made and enter
into upon the express condition that the initial carrier shall ha
and exercise the sole and exclusive right of routing all shipmen
under said joint rates beyond its terminus as well as upon the oth
conditions, provisions and stipulations hereinafter set fort

637 The rates named in this tariff will be subject to the gener
rules and regulations governing the application of rates pu
lished in east-bound tariff No. 3–D (I. C. C. 195), which took effe
July 1, 1902, amendments thereto or superseding issues thereof.

Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pac. sys. and Oregon lines).
San Francisco, Cal.

L. J. Spence, general eastern freight agent,
So. Pac. Co. (New York, N. Y.)

G. W. Luce, general freight agent,
So. Pac. Co., (Pacific system), San Francisco, Cal.

W. E. Coman, general freight agent,
So. Pac. Co.'s lines in Oregon.
Portland, Ore.

G. A. Parkyns, asst. gen. freight agent,
So. Pac. Co. (Pacific system),
Los Angeles, Cal.

H. A. Jones, freight traffic manager,
So. Pac. Co. (Atl. sys.), Houston, Tex.

W. H. Masters, asst. traffic manager,
So. Pac. Co. (Atlantic system),
New Orleans, La.

C. K. Dunlap, general freight agent,
So. Pac. Co. (Atl. sys.) Houston, Tex.

A. S. Hughes, general traffic manager,
D. & R. G. R. R.
Denver, Colo.

638 S. H. Babcock, asst. gen. traffic manager,
D. & R. G. R. R.
Salt Lake City, Utah.

Fred Wild, Jr., general freight agent,
D. & R. G. R. R.,
Denver, Colo.

J. F. Holden, freight traffic manager,
C. R. I. & P. R'y Chicago, Ill.

H. Gower, asst. freight traffic manager,
C. R. I. & P. R'y, Chicago, Ill.

H. H. Emery, general freight agent,
C. R. I. & P. R'y (lines west of Mo. river).
Kansas City, Mo.
A. N. Brown, general freight agent,
E. P. & N. E. R. R. and E. P. & N. E. R'y,
El Paso, Tex.
W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
W. A. Bissell, asst. traffic manager,
Santa Fe system,
San Francisco, Cal.
J. E. Gorman, general freight agent,
A. T. & S. F. R'y, Topeka, Kas.
E. Chambers, general freight agent,
A. T. & S. F. R'y (coast lines),
And Sou. Cal. R'y.
Los Angeles, Cal.
E. L. Sargent, general freight agent,
Texas & Pacific R'y, Dallas, Tex.
639 J. A. Monroe, freight traffic manager,
Union Pacific R. R. Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal. July 9, 1903.
Issued by R. H. Countiss, agent,
49 Second street, San Francisco, Cal.
Wired I. C. C. 7–9–1903 (Auth. 956)

The through rates provided herein will apply in connection with the following named roads the traffic officials of which will certify their concurrence therein to the Interstate Commerce Commission.

Western Roads.

Atchison, Topeka & Santa Fe R'y.
Burlington & Missouri River R. R. in Nebraska.
Cane Belt R. R.
Chicago & Alton R'y.
Chicago & North Western R'y.
Chicago, Burlington & Kansas City R. R.
Chicago, Burlington & Quincy R'y.
Chicago Great Western R'y.
Chicago, Milwaukee & St. Paul R'y.
Chicago, Peiroa & St. Louis R'y of Illinois.
Chicago, Rock Island & El Paso R'y.
Chicago, Rock Island & Mexico R'y.
Chicago, Rock Island & Pacific R'y.
Chicago, Rock Island & Texas R'y.
Chicago, St. Paul, Minneapolis & Omaha, R'y.

Choctaw Oklahoma & Gulf R. R.
640 Choctaw, Oklahoma & Texas R. R.
Colorado & Southern R'y.
Colorado Midland R'y.
Denver & Rio Grande R. R.
El Paso & Northeastern R. R.
El Paso & Northeastern R'y.
El Paso & Rock Island R'y.
Frisco System.
Fort Worth & Denver City R'y.
Ft. Worth & Rio Grande R'y.
Galveston, Harrisburg & San Antonio R'y.
Galveston Houston & Northern R'y.
Gulf, Beaumont & Great Northern R'y.
Gulf, Beaumont & Kansas City R'y.
Gulf, Colorado & Santa Fe R'y.
Hannibal & St. Joseph R. R.
Houston, East & West Texas R'y.
Houston & Texas Central R. R.
Illinois Central R. R.
International & Great Northern R. R.
Iowa Central R'y.
Kansas City, St. Joseph & Council Bluffs R. R.
Kansas City, Clinton & Springfield R'y.
Kansas City Southern R'y.
Kansas City & Northern Connecting R. R.
Kansas City & Omaha R'y.
Keokuk & Western R. R.
Leavenworth & Topeka R'y.
Los Angeles Terminal R'y.
641 Minneapolis & St. Louis R. R.
Missouri Pacific R'y.
Missouri, Kansas & Texas R'y.
National City & Otay R'y.
New York, Texas & Mexican R'y.
Omaha, Kansas City & Eastern R. R.
Pecos system.
St. Joseph, & Grand Island R'y.
St. Louis, Iron Mountain & Southern R'y.
St. Louis, Keokuk & North Western R. R.
St. Louis Southwestern R'y system.
San Antonio & Arkansas Pass R'y.
San Diego, Cuyamaca & Eastern R'y.
San Diego, Pacific Beach & La Jolla R'y.
Santa Fe System (coast lines).
Southern Pacific Co. (Atlantic system).
Southern Pacific Co. (Pacific system).
Texas Central R. R.
Texas Midland R. R.

Texas & New Orleans R. R.
Texas & Pacific R'y.
Union Pacific R. R.
Wabash R. R.
Weatherford Mineral Wells & N. W. R'y.
Wisconsin Central R'y.

Central Freight Association Territory.

Ann Arbor R. R.
Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R. R.
642 Bessemer & Lake Erie R. R.
Chesapeake & Ohio R'y.
Chicago & Eastern Illinois R. R.
Chicago & Erie R. R.
Chicago, Cincinnati & Louisville R. R.
Chicago, Indianapolis & Louisville R'y.
Chicago, Kalamazoo & Saginaw R'y.
Chicago, Peoria & St. Louis R'y of Illinois.
Cincinnati, Hamilton & Dayton R'y.
Cincinnati Northern R. R.
Cincinnati & Muskingum Valley R. R.
Cleveland & Marietta R'y.
Cleveland, Cincinnati, Chicago & St. Louis Ry.
Columbus, Sandusky & Hocking R. R.
Detroit Southern R. R.
Elgin, Joliet & Eastern R'y.
Ft. Wayne, Cincinnati & Louisville R. R.
Grand Rapids & Indiana R'y.
Grand Trunk Railway system,
Cincinnati, Saginaw & Mackinaw R. R.
Detroit, Grand Haven & Milwaukee R'y.
Grand Trunk R'y.
Grand Trunk Western R'y.
Toledo, Saginaw & Muskegon R'y.
Hocking Valley R'y.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Indiana, Decatur & Western R'y.
Lake Erie Alliance & Wheeling R. R.
643 Lake Erie & Western R. R.
Lake Shore & Michigan Southern R'y.
Louisville & Nashville R. R.
Marietta, Columbus & Cleveland R. R.
Michigan Central R. R.
New York, Chicago & St. Louis R. R.
Norfolk & Western R'y.
Northern Ohio R'y.

Ohio Central lines.
Penna. lines west of Pittsburgh, N. W. sys.
Penna. lines west of Pittsburgh, S. W. sys.
Pennsylvania R. R.
Pere Marquette R. R.
Pittsburgh & Lake Erie R. R.
Pittsburgh, Lisbon & Western R. R.
Southern R'y.
Toledo, Peoria & Western R'y.
Toledo, St. Louis & Western R. R.
Vandalia Line.
Wabash R. R.
Wheeling & Lake Erie R. R.

Trunk Line Territory.

Baltimore & Ohio R. R.
Canadian Pacific R'y.
Central New England R'y.
Central R. R. of New Jersey.
Central Vermont R'y.
Chesapeake & Ohio R'y.

Also in connection with
Merchants & Miners Transportation Co.
Old Dominion Steamship Co.

644 Cornwall & Lebanon R. R.
Delaware & Hudson Co.
Delaware, Lackawanna & Western R. R.
Erie railroad.
Grand Trunk R'y.
Lehigh & Hudson River R'y.
Lehigh & New England R. R.
Lehigh Valley R. R.
Maryland & Pennsylvania R. R.
New Jersey & New York R. R.
New York, Susquehanna & Western R. R.
New York Central & Hudson River R. R.
New York Ontario & Western R'y.
Norfolk & Western R'y.
Pennsylvania R. R.
Pennsylvania & Northwestern R. R.
Philadelphia & Reading R'y.
Richmond, Fredericksburg & Potomac R. R.
Wallkill Valley R. R.
West Shore R. R.
Williamsport & North Branch R. R.

New England Roads.

Boston & Albany R. R.
Boston & Maine R. R.
Central New England R'y.
Central Vermont R'y.
Grand Trunk R'y.
Maine Central R. R.
New York, New Haven & Hartford R. R.
Rutland R. R.

645 Southeastern Common Points.

(For application of rates to southeastern common points, see page 19 of east-bound tariff No. 3-D.)

Atlantic Coast Line R. R.
Central of Georgia R'y.
Charleston & Western Carolina R'y.
Columbia, Newberry & Laurens R. R.
Georgia R. R.
Georgia Southern & Florida R'y.
Merchants & Miners Transportation Co.
Norfolk & Western R'y.
Old Dominion Steamship Co.
Plant system.
Seaboard Air Line.
Western & Atlantic railroad.

Also

Illinois Central R. R.
Mobile & Ohio R. R.
Queen & Crescent route,
Cincinnati, New Orleans & Texas Pacific R'y.
Alabama Great Southern R. R.

Oranges, lemons, and grape fruit, in packages or in cars having fixed or transient crates for same, O. R. weather, decay, shortage and delay, prepaid or guaranteed, at estimated weights shown below, in carloads—minimum weight, 26,000 lbs.

646 Estimated Weights.

Oranges—72 pounds per box, when in standard size boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where oranges are packed, 11½ by 11½ by 24 inches).

Lemons—84 pounds per box of standard size, outside measurement 11 by 14½ by 27 inches.

Grape fruit—68 pounds per box, when in standard size orange boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where fruit is packed, 11½ by 11½ by 24 inches).

If boxes of irregular sizes are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.

Oranges, Lemons, and Grape Fruit in Straight or Mixed Carloads.

From—	To—	Rate in cents per 100 lbs.
San Francisco, Sacramento, Marysville, Stockton, Richmond, San Jose, Oakland (16th St.), Los Angeles, San Diego, National City, Cal., Portland, East Portland, Albina, Ore., and "intermediate points," as shown in circular No. 16-B (I. C. C. 218), amendments thereto or re-issues thereof.	*† Missouri River common points. * Mississippi River common points. *Chicago and common points. *Cincinnati, Detroit and common points. *Pittsburgh, Buffalo and common points. *New York, Boston and common points.	x 125

647 ## Winter Relief Rate

on

Lemons in Straight Carloads.

This rate will be in effect December 1st to April 30th.

From—	To—	Rate in cents per 100 lbs.
San Francisco, Sacramento, Marysville, Stockton, Richmond, San Jose, Oakland (16th St.), Los Angeles, San Diego, National City, Cal., Portland, East Portland, Albina, Ore., and "intermediate points," as shown in circular No. 16-B (I. C. C. 218), amendments thereto or re-issues thereof.	*Colorado common points. *† Missouri River common points. * Mississippi River common points. *Chicago and common points. *Cincinnati, Detroit and common points. *Pittsburgh, Buffalo and common points. *New York, Boston and common points.	100

* As described on pages 2 to 26, inclusive, of east-bound tariff No. 3-D (I. C. C. No. 195), amendments thereto or superseding issues thereof.

† Rates named herein to Missouri River common points will also apply to the same points west thereof and via the same routes as authorized on pages 20 to 21 of east-bound tariff No. 3-D, I. C. C. 195 (amendments thereto or superseding issues thereof) under head of General application of rates to points west of Missouri River territory.

Rates named herein do not include charge for icing and care of refrigeration of the fruit in transit, which charge is additional to rates herein named.

648 x Rate named will also apply on the citrus fruits named below:

"Citrus fruits" are the fruits of trees such as the orange, lemon, citron, etc., whose leaves do not fall in autumn. The principal "citrus fruits" are oranges, lemons, limes, mandarines, tangerins, citrons, and grapd fruit.

The rates named above will also apply:—

Via Southern Pacific Co. only:

From stations on the Ventura branch of the Southern Pacific Company (Pacific system), including points on Montalvo extension, viz: Oxnard, Somis, Cal., and points between; also from stations on the Ojai Valley branch, viz: Ventura Junction to Nordhoff, Cal., inclusive. (Will not apply in connection with Missouri, Kansas & Texas R'y.)

Via Santa Fe System only:

From all points on the National City & Otay railway, San Diego, Pacific Beach & La Jolla railway and San Diego, Cuyamaca & Eastern railway.

From points on the Southern California R'y south of Aliso, Cal.

Via Southern Pacific Co. or Santa Fe system:

(Winter relief rate on lemons will not apply from points named below to Colorado common points.)

From stations on the Oroville branch of the Southern Pacific Co., when routed via Ogden, Utah, or when routed via Mojave, Cal., in connection with Santa Fe system, (will not apply in connection with Missouri, Kansas & Texas R'y.)

From all points on the Los Angeles Terminal railway.

649 Mixed Carload Shipments of Citrus and Deciduous Fruits.

Citrus and deciduous fruits may be fowarded in mixed carload lots at the higher carload rate applying upon either commodity.

Mixed Carload Shipments of Citrus Fruits and Vegetables.

Citrus fruits and green vegetables may be forwarded in mixed carloads at the highest rate (for the carload) that is provided for any of the commodities shipped in the car.

Instructions Regarding the Acceptance of Shipping Orders.

The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations herein set forth.

Diversions.

Initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

Quick Service.

Each road participating in the citrus fruit traffic is urged to expedite the movement of shipments in every possible way.

650 Prohibition of Stops in Transit to Partly Unload.

Rates named herein apply only on full carload shipments, from one consignor at initial point of shipment, consigned and to be delivered to one consignee at one destination. Less than full carloads will be subject to the less than carload rates, but not to exceed charges for full carload. Cars will not be allowed to be stopped in transit at any point intermediate to complete loading or to partly unload.

Protection of Notations Made by Initial Lines on Way Bills.

When initial carrier makes notation on way bills giving connecting carriers specific instructions pertaining to the freight, all connecting lines following such instructions are protected by bond in the hands of initial carrier.

651 Q. You were also directed to bring with you letters, instructions and routing sheets showing the percentage of citrus fruit business distributed to eastern connecting lines. Have you brought that paper?

A. Yes sir, with the exception of one. Your demand calls for these documents for the period commencing October 15, 1899, and ending October 15, 1903. We have issued three routing circulars since the routing of citrus fruit has been done by the initial carriers. The first one-, for the season 1899 to 1900, have all been destroyed. To make it clear to you, we print sufficient of these circulars to distribute among the agents who use them and the officers of the company who are interested in them, and at the close of that season we call them all in and issue a new one for the approaching season. When the new circulars are issued, we destroy every one of the old ones. We don't even keep an office copy. All those for the season 1900 to 1901 have been destroyed that we issued, with the exception of one circular. That one circular was never returned to us. I can't say now from what point it was not returned, but we have never gotten it back in our office. I have here the routing circular for the season 1901 and 1902, which goes from November 1st, 1901 to October 31st, 1902. That circular should have been destroyed with the other circulars when the circular for the season 1902 and 1903 was published; but for some reason this one circular was not. I found it in my office, in the desk of the routing clerk. I can't say that it is complete. It is complete in its original issue. Possibly there were one or two amendments adding some new destinations that don't appear in this circular. Otherwise I think it is
652 complete, and I will be glad to offer it in evidence. I will say further that the instruction part of that and the one for

e subsequent season, now in effect, was offered as evidence, or in idence, to the commission at the original hearing.
Q. The instructions accompanying it, you say?
A. Yes, the instructions embodied in that circular. The distribution part of it we considered as private information, as a merant might consider anything in the conduct of his business as vate.
Q. Is this paper an original document, or is it a copy made in ur office?
A. It is a copy made in our office.
Q. When was it made?
A. It was made——
Q. That is, when was it copied?
A. I presume it was copied in either September or October.
Q. Of this year?
A. No sir.
Q. Of what year?
A. Of the year in which it was issued.
Q. Ah yes.
. I can't say that that is the original document any more than ould say that the one I have here which is at present in effect is original document, because they are all run off on a neostyle.
Q. And distributed that way as an original, or for use?
A. Yes sir. To continue my explanation, we offered this circular, routing circular, to the commission, in evidence, at that time, explaining that the distribution part we considered vate. We didn't care to have it put in the newspapers, we didn't to have it so that all the connections could see what each other e getting, each of the lines were getting. Upon our explanation he commission of our wishes in the matter, they were deferred nd the distribution part and the instruction part were separated, commission accepting the instruction part, leaving the distribupart with us.
. Well, the record before the commission shows what was done hat regard?
. I think it does. I think I read it in the testimony that you e on file here. I read it the other day.
. Yes.
. Now, I would say further that we have no objection whatever ling this with the commission. In fact, I talked with Mr. Biddle, traffic manager, about it, who was here quite recently, and he his unqualified consent to have it filed with the commission. aid this way, that he preferred not to have the distribution part in——

r. CALL: Well, it is not necessary to repeat what Mr. Biddle said. l offer this paper in evidence, to be marked Complainant's Ex- 12.

r. NORTON: I object to the introduction of the paper offered, on

the ground of its immateriality and incompetency, and desire to suggest that as long as the objection that I make remains unpassed upon that this is probably strictly speaking not a public
654 record and that we are entitled to secrecy until the final ruling as to whether it is admissible or not can be had.

Mr. CALL: I understand that under the practice in equity that it is for the court to determine what testimony is admissible, and upon appeal that it will be determined by the supreme court whether it is admissible there, and each court determine to what extent it will consider it in determining the merits of the case. I have no objections to its being retained by the commissioner and withheld from public inspection until it goes before the court.

The COMMISSIONER: The document will be withheld from the public.

Mr. FLINT: In making this objection, you understand, I believe, that all this testimony goes in subject to any legal objection we may have, anyway.

Mr. NORTON: Yes, but I want to specify this right here in relation to this particular matter. The only objection we have is to letting other people know what we are doing and how we do it.

The document last offered in evidence is as follows:

655 Citrus Routing Circular, Season 1901 & 1902.

656 (1.)

"Santa Fe."

Southern California Railway.

General Freight Department.

Circular Letter 41-D.

(Canceling Circular Letter No. 41-C.)

LOS ANGELES, Nov. 12, 1901.

(Private.)

To agents Southern California railway:

Referring to circular letter No. 45 regarding forwarding of citrus fruit, effective January 1, 1900, you will route shipments of citrus fruit, originating at your station in accordance with the instructions herein given:

1. Destinations and routes that you will use, and percentage of business that it is desired to send via different railroads *is* shown herein. You will, in forwarding shipments, divide between connecting lines in accordance with the proportions given in this sheet.

2. Shipments to any point reached by Santa Fe system lines must follow its track to destination.

3. Shipments to points not shown in this list that are local or on
y connecting line, give the Santa Fe system longest possible haul
d make reasonable direct routes.
4. Shipments to points beyond Santa Fe system lines reached by
more than one railroad and that *is* not shown in the list of
destinations given herein, you will forward by the most direct
route, having in view the long haul for the Santa Fe system.
5. Shipments via Colton or Los Angeles to an eastern destination
Southern Pacific line, you will bill care of Southern Pacific Com-
ny with no other routing, except specially instructed by this com-
ny, *with no other routing, except specially instructed by this* office;
may show on way bill when necessary points shippers desire
to pass through to reach certain markets in accordance with in-
ructions in paragraph six. Agent of the Southern Pacific Com-
ny at Colton or Los Angeles, as case be, will forward you imme-
tely after billing an abstract of his way bill showing routing
ough to destination. This is done that you may be able to show
the bill lading, if so desired by shipper, routing through, or give
information in any other form to shipper.
. Shippers will be allowed to make following notation on ship-
g order covering shipments of citrus fruit and carrier will, so far
consistent, comply—
Would prefer this car to pass through —— points that shipper
likely market the car to be shown in blank spaces but must in
ry instance be point reached by more than one railroad.
. When a shipper asks for some particular delivery and you are
sfied that it is necessary to the business that it be given, and if
the route is one authorized in this circular, you may write as
the shipper desires so far as the delivering line is concerned.
If any intermediate lines you will use each of them as will
e to divide the business in accordance with the proportion shown
ein.
. This circular is for the private information of the agent to
om it is sent, must be kept under lock and key and not to be
wn to any outsiders or employé, except such employés as have
se it in their station work, and representatives of the freight
artment and general officials of the Southern California railway.
nts will be held strictly accountable for the proper care of this
ular.

	Agents will distribute shipments in accordance with percentages shown in this column.							
Akron, Ohio	50 per cent.	Sta	Fe	to	K	K	K	c/o I I I–B & O
" "	50 per cent.	"	"	"	"	"	"	Erie
Albany, N. Y.	50 per cent.	"	"	"	"	"	"	G T,
" "	50 per cent.	"	"	"	"	"	"	D L & W, D & H L S, W S

| | | |

32 Bradford, Pa.		" "	K K K c/o I I I, L S B R & P
33 Brandon, Man.	50 per cent	" "	Kansas City, C G W, Nor Pac
34 " "	50 per cent	" "	" " c/o C M & St P, G N C P
600			
35 Brantford, Ont.		Santa Fe to	K K K c/o I I I Gt
36 Bridgeport, Conn.		" "	" " " "
37 Brownwood, Texas.		"	Penna N Y N H & H
38 Buffalo, N. Y.	90 per cent	" "	" " " " L S & M S
39 " "	90 per cent	" "	Joliet c/o Mich Cent
40 " "	40 per cent	" "	K K K c/o I I I Grand Trunk
41 " "	90 per cent	" "	" " " " N Y C & St L
42 Burlington, Iowa		" "	Bucklin c/o C B & Q
43 Burlington Vt.		" "	K K K c/o I I I Grand Trunk
44 Cairo, Ill.		" "	Kansas City, c/o C B & Q M & O Ry
45 Canon City, Col.		"	
46 Carthage, Mo.		" "	Kansas City, c/o Mo Pac
47 Catskill, N. Y.		" "	K K K c/o I I I L S W S
48 Cedar Rapids, Iowa.	100 per cent	" "	Kansas City c/o C B & Q
49 Centralia, Ill.		" "	Pekin c/o C P & St L, J & St L
50 Charleston, S. C.	75 per cent	" "	Oklo City C O & G, So. Ry
51 " "	25 per cent	" "	Kansas City, Mo Pac, So Ry
52 Chattanooga, Tenn.	75 per cent	" "	Oklo City c/o C O & G So. Ry
53 " "	25 per cent	" "	Kansas City, Mo Pac So. Ry
54 Cherokee, Iowa.		" "	Kansas City c/o C B & Q Ill Cen
55 Cheyenne, Wyo.		" "	Trinidad c/o Colo Son
56 Chicago, Ill.		"	
57 Chickasha I. T.		" "	Pueblo c/o C R I & P

58	Cincinnati, Ohio	20 per cent.	"	"	Mazon, c/o Big Four				
59	" "	60 per cent.	"	"	K K K c/o I I I P C C & St L				
60	" "	20 per cent.	"	"	"	"	"		
61	Cleveland, Ohio	20 per cent.	"	"	"	"	"	Monon L S	
661									
62	Cleveland, Ohio,	60 per cent.	Santa Fe to K K K c/o I I I N Y C & St L						
63	" "	20 per cent.	"	"	"	"	"	Erie	
64	Clinton, Iowa,	40 per cent.	"	"	Kansas City c/o C M & St P				
65	" "	60 per cent.	"	"	"	"	"	C B & Q	
66	Colorado Springs, Col.		"						
67	Columbia, S. C.		"	"	Oklo City c/o C O & G So Ry				
68	Columbia, Penna.		"	"	K K K c/o I I I Penna.				
69	Columbus, Ga.	80 per cent.	"	"	Oklo City c/o C O & G So R'y				
70	" "	20 per cent.	"	"	Kansas City M P, So Ry.				
71	Columbus, Ohio,	30 per cent.	"	"	Mazon, c/o Big Four				
72	" "	50 per cent.	"	"	K K K c/o I I I P C C & St L				
73	" "	20 per cent.	"	"	"	"	"	B & O	
74	Connelsville, Pa.		"	"	"	"	"	Penna.	
75	Cortland, N. Y.		"	"	"	"	"	N Y C & St L D L & W	
76	Council Bluffs, Iowa,		"	"	Denver c/o C & N W				
77	Creston, Iowa,		"	"	Kansas City c/o C B & Q				
78	Cripple Creek, Colo.		"	"	Colorado Spr'gs, c/o Colo M I D				
79	Crookston, Minn.		"	"	Kansas City c/o C M & St P G N				
80	Cumberland, Md.		"	"	K K K c/o I I I B & O				
81	Dallas, Texas,		"	"					
82	Davenport, Iowa,	40 per cent.	"	"	Kansas City c/o C M & St P				
83	" "	60 per cent.	"	"	Kansas City c/o C B & Q				
84	Dayton, Ohio,	25 per cent.	"	"	K K K c/o I I I Monon C H & D				
85	" "	25 per cent.	"	"	Mazon, c/o Big Four				

86	" "	50 per cent.	"	" K K K c/o I I I, P C C & St L
87	Deadwood, S. D.		"	" Superior, c/o E & M V
88	Defiance, Ohio,		"	" K K K c/o I I I B & O
662				
89	Dennison, Texas,		Sante Fe to Sherman c/o St L & S F	
90	Denver, Col.		"	
91	Des Moines, Iowa,	50 per cent.	"	" Kansas City c/o C G W
92	" "	50 per cent.	"	" St Joe, c/o C. B & Q
93	Detroit, Mich.	40 per cent.	"	" K K K c/o I I I L S
94	" "	20 per cent.	"	" Joliet c/o M C
95	" "	40 per cent.	"	" K K K c/o I I I G T
96	Dubuque, Iowa,	25 per cent.	"	" Kansas City c/o C M & St P
97	" "	75 per cent.	"	" Kansas City " C G W
98	Duluth, Minn.	75 per cent.	"	" " " " " C B & Q, E M
99	" "	25 per cent.	"	" " " " " C G W S P & D
100	Dunkirk, N. Y.		"	" K K K c/o I I I L S & M S
101	Easton, Pa.		"	" " " " " G T L V
102	Eau Claire, Wis.		"	" Kansas City c/o C N & St P
103	Elgin, Ill.		"	" Kansas City " " "
104	Elmira, N. Y.	80 per cent.	"	" K K K c/o I I I Erie
105	" "	20 per cent.	"	" " " " " G T D L & W
106	El Paso, Texas,		"	
107	Emporia, Kansas,		"	
108	Erie, Pa.		"	" " " " " L S & M S
109	Evansville, Ind.		"	" Pekin c/o P D & E
110	Fairmount, W. Va.		"	" K K K c/o I I I B & O
111	Fall River, Mass.		"	" " " " "
112	Fargo N. D.	20 per cent.	"	Penna N Y N H & H " Kansas City c/o C G W G N
113	" "	80 per cent.	"	" Denver c/o C B & Q No Pac
114	Flint. Mich.		"	" K K K c/o I I I G T
115	Florence, Colo.		"	
116	Fond du Lac, Wis.	50 per cent.	"	" Chicago c/o Wis Cen

117	Fond du Lac, Wis.	50 per cent.	Santa Fe to Chicago c/o C & N.W	
118	Fort Dodge, Iowa.	"	" Kansas City c/o C R I & P	
119	Fort Scott, Kansas	"	" " " " K C F S & M	
120	Fort Smith, Ark.	50 per cent.	" " Burrton, c/o St L & S F	
121	" " "	50 per cent.	" " Kansas City c/o Mo. Pac	
122	Fort Wayne, Ind.	30 per cent.	" " K K K c/o I I I L S	
123	" " "	30 per cent.	" " " " " N Y C & St L.	
124	" " "	40 per cent.	" " " " " " Penna.	
125	Fort Worth, Texas,	"		
126	Fremont, Neb.	"	" Superior c/o F E & M V	
127	Galesburg, Ill.	"		
128	Galveston, Texas,	"		
129	Geneva N. Y.	100 per cent.	" " K K K c/o I I I L S N Y C	
130	Glen Falls N. Y.	"	" " " " " N Y C & St L W S D & H	
131	Grand Forks N. D.	80 per cent.	" " Denver c/o C B & Q G N	
132	" " "	20 per cent.	" " Kansas City c/o C G W N P	
133	Grand Island, Neb.	"	" Denver c/o C B & Q	
134	Grand Rapids, Mich.	50 per cent.	" " K K K c/o I I I Pere Marquett-	
135	" " "	50 per cent.	" " Chicago c/o G T G R & I	
136	Guelph Ont.	"	" K K K c/o I I I Gt	
137	Guthrie, O. T.	"		
138	Hagerstown, Md.	"	" " " " " B & O	
139	Hannibal, Mo.	"	" Bucklin, c/o C B & Q	
140	Harrisburg, Pa.	"	" K K K c/o I I I Penna.	
141	Hartford, Conn.	30 per cent.	" " " " " N Y & A N Y N H & H	
142	" "	10 per cent.	" " " " C & St L B I I I	
143	" "	20 per cent.	" " " " " " Penna N Y N H & H Erie	
144	" "	40 per cent.	" " " " " " C N E N Y N H & H G T W S N Y N H & H	

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145 Hamilton, Ont.		Santa Fe to	K K K c/o	I I I Wabash C P
146 Hastings, Neb.		"	"	Denver c/o B & M
147 Hazelton, Pa.		"	"	K K K c/o I I I G T L V
148 Holridge, Neb.		"	"	Denver c/o B & M
149 Houghton, Mich.		"	"	Kansas City c/o C M & St P D S S & A
150 Houston, Texas.		"		
151 Hutchinson, Kas.		"		
152 Indianapolis, Ind.	30 per cent.	"	"	K K K c/o I I I P C C & St L
153 " "	20 per cent.	"	"	Mazon c/o Big Four
154 " "	25 per cent.	"	"	K K K c/o I I I Monon
155 " "	25 per cent.	"	"	Crandall c/o L E & W
156 Iowa City, Iowa,		"	"	Kansas City c/o C B & Q
157 Ithaca, N. Y.		"	"	K K K c/o I I I L S D L & W
158 Jackson, Mich.		"	"	K K K c/o I I I G T
159 Jacksonville, Fla.	75 per cent.	"	"	Oklo City c/o C O & G S O Ry
160 " "	25 per cent.	"	"	Kansas City c/o Mo Pac So Ry
161 Jacksonville, Ill.		"	"	Kansas City c/o C & A
162 Jamestown, N. Y.		"	"	K K K c/o I I I Erie
163 Jefferson Ma.		"	"	Kansas City c/o Mo Pac
164 Johnstown, Pa.	50 per cent.	"	"	K K K c/o I I I B & O
165 " "	50 per cent.	"	"	" " " Penna.
166 Jonesboro, Ark.		"	"	Kansas City c/o K C F S & M
167 Joplin, Mo.	50 per cent.	"	"	" " " Mo. Pac
168 " "	50 per cent.	"	"	" " " K C F S & M
169 Kalamazoo, Mich.	50 per cent.	"	"	K K K c/o I I I Penna.
170 " "	50 per cent.	"	"	" " " L S & M S
171 Kansas City, Mo.		"		

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172	Keene, N. H.		Santa Fe to K K K c/o I I I G T N D L
173	Keokuk, Iowa.		" " Kansas City c/o C B & Q
174	Kingston, Ont.		" " K K K c/o I I I G T
175	Knoxville, Tenn.		" " Oklo City c/o O & G So Ry
176	La Crosse, Wis.	40 per cent	" " Kansas City c/o C M & St P
177	" " "	60 per cent	" " " " " C B & Q
178	La Fayette, Ind.		" " Mazon c/o Big Four
179	Lawrence, Kan.		"
179½	Leadville, Col.		" " Col. Sprgs. c/o Colo. Mid.
180	Leavenworth, Kan.		"
181	Lebanon, Pa.		" " K K K c/o I I I G T L V P & R
182	Lehighton, Pa.		" " " " " N Y C & St L Ly
183	Lima, Ohio	50 per cent	" " " " " Erie
184	" "	50 per cent	" " " " " Penna.
185	Lincoln, Neb.		" " Denver, c/o B & M
186	Little Rock, Ark.		" " Oklo City c/o C O & G
187	Logansport, Ind.		" " K K K c/o I I I P C C & St L
188	London, Ont.		" " " " " Wab. C P Des
189	Louisville, Ky.	30 per cent	" " " " " P C C & St L
190	" "	30 per cent	" " " " " Monon
191	" "	40 per cent	" " Mazon c/o Big Four
191½	Lynchburg, Va.		" " Mazon c/o Big Four C & O

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193	Macon, Ga.		Santa Fe to Oklo City c/o C O & G So Ry
194	Malone, N. Y.		" " K K K c/o I I I L S N Y C
195	Malvern, Ark.		" " Pueblo, c/o Mo. Pac.
196	Mankato, Minn.	50 per cent	" " Kansas City c/o C & G W
197	" "	50 per cent	" " " " " C M & St P
198	Mansfield, Ohio,	40 per cent	" " K K K c/o I I I Penna.

99	"	"	20 per cent.	"	"	"	" B & O
00	"	"	40 per cent.	"	"	"	" Erie
01	Marietta, Ohio			"	"	"	" Penna
02	Marion, Ohio,		50 per cent.	"	"	Mazon c/o Big Four	
03	"	"	50 per cent.	"	"	K K K c/o I I I Erie	
04	Marion, Ind.			"	"	"	" P C C & St L
05	Marshalltown, Iowa		25 per cent.	"	"	Kansas City c/o C M & St P In Cen	
06	"	"	75 per cent.	"	"	"	" C G W
07	Mason City, Iowa,			"	"	"	" c/o C M & St P
08	Memphis, Tenn.		75 per cent.	"	"	Okla City c/o C O & G	
09	"	"	25 per cent.	"	"	Kansas City c/o Mo. Pac	
10	Menominee, Mich.			"	"	"	" c/o C M & St P
11	Milwaukee, Wis.		25 per cent.	"	"	"	" C M & St P
12	"	"	75 per cent.	"	"	Chicago c/o Wis Cen	
13	Minden, Neb.			"	"	Denver c/o B & M	
14	Minneapolis, Minn.		25 per cent.	"	"	Kansas City c/o C M & St P	
15	"	"	75 per cent.	"	"	"	" C G W
16	Monett, Mo.			"	"	Burton, c/o St L & S F	
17	Monmouth, Ill			"	"	Kansas City c/o C B & Q	
18	Monroe, La			"	"	Pueblo c/o Mo. Pac	
19	Montgomery, Ala			"	"	"	" c/o C O & G So Ry Okla City
20	Montreal, Quebec		50 per cent.	"	"	K K K c/o I I I M C C P	
21	Montreal, Quebec		50 per cent.	Santa Fe to	K K K c/o I I I		Grand Trunk
22	Muskegon, Mich.			"	"	"	" Pere Marquette
23	Muncie, Ind.			"	"	Mazon c/o Big Four	
24	Munsey, Ill.			"	"	"	"
25	Nashville, Tenn.		100 per cent.	"	"	Okla City c/o C O & G N C & St L.	
26	Nebraska City, Neb.			"	"	Denver c/o C B & Q	
27	Newark, Ohio,		50 per cent.	"	"	K K K c/o I I I B & O	
28	"	"	50 per cent.	"	"	"	" P C C & St. L.

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229	New Bedford, Mass.		Santa Fe to	K K K c/o I I I Penna N Y N H & H
230	New Britain, Conn.		" "	" " I I I Penna N Y N H & H
231	Newburg, N. Y.		" "	" " I I I Erie
232	Newcastle, Pa.		" "	" " Penna
233	New Haven, Conn.		" "	" " L S N Y C B & A N Y N H & H
234	New Orleans, La.		" "	Kansas City c/o K C F S & M Ill Cen.
235	Newton, Kansas		"	
236	New York, N. Y.	25 per cent.	" "	K K K c/o I I I Erie
237	" "	25 per cent.	" "	" " B & O
238	" "	25 per cent.	" "	" " L S, Erie
239	" "	25 per cent.	" "	" " G T Erie
240	Norfolk, Va.		" "	Mazon c/o Big Four C & O
241	Oklahoma O. T.		"	
242	Oil City, Pa.		" "	K K K c/o I I I Erie
243	Omaha, Neb.		" "	Denver c/o C B & Q
244	Oneonta, N. Y.		" "	K K K c/o I I I L S D L & W D & H
245	Oskaloosa, Iowa,	30 per cent.	" "	Kansas City c/o C M & St P Ia. Cen
246	" "	70 per cent.	" "	Kansas City c/o C B & Q
247	Os-kosh, Wis.		" "	" " C M & St. P.
248	Ottawa, Ont.	50 per cent.	" "	K K K c/o I I I Wab C P
249	" "	50 per cent.	" "	" " " G T
250	Ottumwa, Iowa		" "	St. Joe c/o C B & Q
251	Parkersburg, W. Va.		" "	K K K c/o I I I B & O
252	Pecos, Texas,		" "	Trinidad c/o Col. So to Amarillo, c/o Santa Fe beyond

669

253	Peoria, Ill.	30 per cent.	Santa Fe to	Nemo c/o Ia. Cen
254	" "	70 per cent.	" "	Kansas City c/o C B & Q
255	Petersburg, Va.		" "	K K K c/o I I I Erie N & W
256	Philadelphia, Pa.	50 per cent.	" "	" " Penna

257	"	"	25 per cent.	"	"	"	"	B & O
258	"	"	25 per cent.	"	"	"	"	G T L V P & R
259	Piqua, Ohio,			"	"	"	"	P C C & St L
260	Pittsburg, Kansas			"				
261	Pittsburg, Pa.		40 per cent.	"	"	K K K	c/o	I I I	B & O
262	"	"	60 per cent.	"	"	"	"	"	Penna
263	Pittsfield, Mass.		50 per cent.	"	"	"	"	"	L S N Y C B & A
264	"	"	50 per cent.	"	"	"	"	"	Penna N Y N H & H
670										
				Santa Fe to						
265	Portland, Maine			"		K K K	c/o	I I I	Grand Trunk
266	Poughkeepsie, N. Y.			"		"	"	"	L S N Y C
267	Providence, R. I.		25 per cent.	"		"	"	"	L S N Y C B & A N Y N H & H
268	"	"	10 per cent.	"		"	"	"	Erie N Y N H & H
269	"	"	25 per cent.	"		"	"	"	G T L V N Y N H & H
270	"	"	15 per cent.	"		"	"	"	N Y C & St L W S Fitch N Y N H & H
271	"	"	25 per cent.	"		"	"	"	Penna. N Y N H & H
272	Pueblo, Col.			"					
273	Quebec, Quebec		50 per cent.	"		"	"	"	Wab C P
274	"	"	50 per cent.	"		"	"	"	G T
275	Quincy, Ill.			"		Bucklin,	c/o	C B & Q
276	Racine, Wis			"		Kansas City,	c/o	C M & St P
277	Rapid City, S. D.			"		Superior	c/o	F E & M V
278	Reading, Pa.			"		K K K	c/	I I I	G T L V P & R
279	Richmond, Va.			"		Mazon,	c/o	Big Four C & O
280	Richmond, Ind.			"		K K K	c/o	I I I	Penna.
281	Rochester, N. Y.		40 per cent.	"		"	"	"	L S N Y C
282	"	"	50 per cent.	"		"	"	"	Erie
283	"	"	10 per cent.	"		"	"	"	G T L V
284	Rockford, Ill.			"		Toluca	c/o	Ill Central.
285	Saginaw, Mich.		50 per cent.	"		K K K	c/o	I I I	Pere Marq.
286	"	"	50 per cent.	"		"	"	"	Grand Trunk

287	Salina, Kas.		"		
288	Sapulpa, I. T.		"	Oklo City c/o St L & S F	
289	Sandusky, Ohio		"	K K K c/o I I I L S	
290	San Antonio, Texas		"	Milano Jct c/o I & G N	
291	Sarina, Ont.		"	K K K c/o I I I G T	
292	Saranac Lake, N. Y.		"	" " " L S N Y C	
293	Savannah, Ga.	50 per cent.	"	Oklo City, C O & G So. Ry.	
294	" "	50 per cent.	"	Kansas City c/o M P So. Ry.	
295	Scranton, Pa.		"	K K K c/o I I I L S D L & W	
296	Schenectady, N. Y.		"	" " " c/o L S N Y C	
671					
297	Sedalia, Mo.		Santa Fe to Kansas City c/o Mo. Pac.		
298	Shamokin, Pa.		" "	K K K c/o I I I Penna.	
299	Shreveport, La.		" "	Kansas City c/o K C S	
300	Sioux City, Iowa.		" "	Denver c/o B & M	
301	Sioux Falls, S. D.		" "	Kansas City c/o M P C St P M & O	
302	So. Norwalk, Conn.		" "	K K K c/o I I I Penna N Y N H & H	
303	South Bend, Ind.		"	" " " "	
304	South McAlister, I. T.		"	" Oklo City c/o C O & G	
305	Springfield, Mo.		"	" Kansas City c/o K C F S & M	
306	Springfield, Ill.	50 per cent.	"	" " " " C & A	
307	" "	50 per cent.	"	" " " " Wabash	
308	Springfield, Ohio.	50 per cent.	"	" Mazon c/o Big Four	
309	" "	50 per cent.	"	" K K K c/o I I I P C C & St L	
310	Springfield, Mass.	25 per cent.	"	" K K K c/o I I I Penna N Y N H & H	
311	" "	20 per cent.	"	" " " " " L S N Y C B & A	
312	" "	20 per cent.	"	" " " " " G T L V N Y N H & H	
313	" "	35 per cent.	"	" " " " Wabash, C P Dea.	

314	St. Johns, Quebec.	50 per cent.	" " " " " GT	
315	" " "	50 per cent.	" " " " " Wabash C P	
316	St. Joseph, Mo.		"	
317	St. Louis, Mo.	20 per cent.	" " Kansas City c/o M. P.	
318	St. Louis Mo.	80 per cent.	" " " " " C B & Q	
319	St. Paul, Minn.	25 per cent.	" " " " " C M & St P	
320	" " "	75 per cent.	" " " " " C G W	
672				
321	St. Thomas, Canada,	60 per cent.	Santa Fe to Joliet c/o M C C P	
322	St. Thomas, Canada,	40 per cent.	" " K K K c/o I I I G T	
323	Staunton, Va.		" " Mazon c/o Big Four C & O	
324	Streator, Ill.		"	
325	Syracuse, N. Y.	20 per cent.	" " K K K c/o I I I N Y C & St L D L & W	
326	" "	35 per cent.	" " " " " L S N Y C	
327	" "	45 per cent.	" " " " " G T D L & W	
328	Temple, Texas,		Santa Fe	
329	Terre Haute, Ind.		" to Morton c/o Vandalia	
330	Toledo, Ohio,		" " K K K c/o I I I L S	
331	Topeka, Kansas		"	
332	Toronto, Can.	50 per cent.	" " " " " Wabash C P	
333	" "	50 per cent.	" " " " " G T	
334	Trinidad, Colo.		"	
335	Troy, N. Y.		" " " " " L S Erie	
336	Utica, N. Y.	50 per cent.	" " " " " L S N Y C	
337	" "	—	" " " " " G T D L & W	
338	Van Wart, Ohio,		" " K K K c/o I I I Penna.	
339	Victor, Col.		" " Colorado Springs c/o Colo Mid	
340	Vincennes, Ind.		" " Pekin c/o Big Four	

341	Waco, Texas.		Santa Fe to Cameron, e/o	S A & A P
342	Wahpeton, N. D.		" " Kansas City e/o	C M & St P
343	Warren, Ohio.	50 per cent.	" " K K K e/o	L I Erie
344	" "	50 per cent.	" " " "	" "
345	Watupps, Mass.		" " "	Penna. " "
673				Penna N Y N H & H
346	Waukegan, Ill.	50 per cent.	" " Joliet e/o	C & N W
347	" "	50 per cent.	" " " "	E J & E
348	Washington, D. C.	50 per cent.	" " K K K e/o	B & O
349	" "	50 per cent.	" " " "	" "
350	Watertown, S. D.		" " Superior e/o	Penna. C St P M & O
351	Watertown, N. Y.		" " K K K e/o	L S & N Y C
352	Waterbury, Con.		" " " "	" " Penna N Y N H & H
353	Wausau, Wis.		" " Kansas City e/o	C M & St P
354	Waterloo, Iowa.		" " " "	" " C G W
355	Waxahachie, Texas.		" " Fort Worth e/o	M K & T
356	Weatherford, Texas.		"	
357	Wellsville, N. Y.		" " K K K e/o	L S Erie
358	West Superior, Minn.		" " Kansas City e/o	C G W E Minn
359	Wheeling, W. Va.		" " K K K e/o	B & O
360	Wichita, Kan.		"	
361	Wilkesbarre, Pa.		" " K K K e/o	G T Lv
362	Winnipeg, Man.	25 per cent.	" " Kansas City e/o	C M & St P N P
363	" "	75 per cent.	" " " "	" " C G W N P

364	Winfield, Kan.		"	
365	Worcester, Mass.	50 per cent.	"	" K K K c/o I I I L S N Y C B & A
367	" "	50 per cent.	"	" " " " Can Pac
367½	Winona, Minn.		"	" Kansas City c/o C M & St P
674			Santa Fe to	
368	York, Pa.		"	" K K K c/o I I I Penna.
369	Youngstown, Ohio	40 per cent.	"	" " " L S
370	" "	30 per cent.	"	" " " Erie
371	" "	30 per cent.	"	" " " Penna.
372	Zanesville, Ohio.	50 per cent.	"	" K K K c/o I I I B & O
373	" "	50 per cent.	"	" " " P C C & St L C & M V

EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Ass't General Freight Agent.

675 By Mr. CALL:

Q. What other documents have you?

A. This is the one that is in effect for the season of 1902 and 1903. And in addition to the routing circular I also have attached circular letter number 45 E, that is reissued every year with the routing circular, instructing the agents how to be governed in the handling of the fruit. I don't know that this document has been asked for, or filed heretofore; but we give it to you very voluntarily. I have attached it to that. That is complete in its issue, that circular that you have there.

By Mr. NORTON:

Q. The supplement you speak of here in addition to the routing circular?

A. Yes sir, and then the original circular of instructions to agents in regard to handling the citrus fruit shipments.

By Mr. CALL:

Q. This is on file in your office, is it?

A. This is a copy of the one we have on file in our office, yes sir.

Q. Who made this copy?

A. Why, that was run off at the time we ran them all off on the neostyle.

Q. This is produced as a duplicate of the original and in lieu of the original?

A. Yes sir.

Mr. CALL: I would say that at any time when any original document that you need for the files of your office is produced or offered in evidence that you can retain the original by having an attested copy made by the examiner, so as not to interfere with the operations of your business.

676 The WITNESS: I see.

Mr. CALL: I offer this paper in evidence, to be marked Complainant's Exhibit Number 13.

Mr. NORTON: Has the record stated what it is?

Mr. CALL: Yes.

Q. You stated what it was?

A. Yes sir.

Mr. NORTON: The same objection to that that I offered to the former distribution circular.

The document last offered in evidence is as follows:

677 "Citrus" Routing Circular, Season 1902 & 1903.

678 "Santa Fe."

Southern California Railway Company, General Freight Department.

"Personal." LOS ANGELES, December 1, 1902.

Circular Letter No. 45–B.

Cancelling No. 45–A and 64 (Coast Lines No. 1).

To agents Southern California railway:

Referring to Trans-continental Freight Bureau east-bound special tariff 344 (system No. 5930–A) effective December 1, 1902, covering rules for handling citrus fruit:

1. On and after December 1, 1902, you must not sign shipping receipts, or accept shipping orders or other documents from shippers covering shipments of citrus fruit destined to Colorado common points or east thereof with routing instructions shown thereon; neither will you accept verbal routing instructions therefore, except as provided in paragraph 7.

2. Routing of all shipments of citrus fruit as hereinbefore described, that originate at stations on the Southern California railway, will be furnished agents by this office in a separate circular.

3. Say to shippers that to enable it to guarantee the through rate the absolute right of routing through to destination shipments of citrus fruits destined to Colorado common points and east thereof

that originate on its line is reserved by the Southern California railway; also to properly handle diversion orders it is necessary
679 that the originating line control the routing.

4. If any shippers insists on giving routing, you will accept the shipment with shipper's routing shown on the shipping order, and advise the shipper that rates and conditions in accordance with western classification will apply, and that full rate will be charged to the junction point on the Santa Fe system. You will also endorse on the shipping receipt, bill of lading and way-bill the following:

"Routed by shipper. Rates and conditions in accordance with western classification to apply."

Advise this office promptly of all cases where shippers do the routing.

5. Agents may inform shippers of the route shipments will move, and when requested to do so, will show on the bills of lading or shipping receipts full routing through to destination.

6. If shipper requests you to forward via Southern Pacific Company lines to an eastern destination a shipment that could be handled via Santa Fe line to the same destination, you will ascertain from the shipper why it is desired that shipment so move and wire this office for instructions (unless on file.)

7. Diversions will be handled the same as heretofore, except that routing will be controlled in the same manner as when the shipment was accepted. If any changes in routing necessary account of change of destination, new routing must be designated by you in diversion request sent to auditor, and in accordance with the routing list. Connecting lines will not be allowed to change the billing in any particular except the consent of the Southern California railway first be obtained.

680 8. Bills of lading will be issued by agents of the Southern California railway for all shipments of citrus fruit that originate at stations on its line with destination Colorado common points or east thereof regardless of the route that shipments move. Southern Pacific Company will, in like manner, issue bills of lading for all such shipments that originate at stations on its line. On each bill of lading or shipping receipt covering shipments routed by agents of the Southern California railway you will stamp the following notation:

"To enable it to guarantee the through rate, the absolute right of routing through to destination is reserved by the Southern California Railway Company. Diversions in transit will not be permitted except the consent of the Southern California Railway Company —first obtained."

9. All refrigerator cars in service on Southern California railway are of the latest improved pattern, and are suitable for citrus fruit traffic, and are absolutely under the control of the Southern California Railway Company, and will be handled in common in the same manner as the ordinary freight cars.

10. Southern Pacific Company will use for its long haul citrus fruit and vegetables traffic refrigerator cars controlled by Armour car line.

11. Santa Fe system will use for its long haul Santa Fe refrigerator despatch cars.

12. Armour cars will not be placed for loading on S. C. Ry. when for east via Barstow or to system points north of Barstow. (See below.)

681 13. Santa Fe refrigerator despatch cars will not be placed for loading on the S. C. Ry. when routed to any point on or reached via Southern Pacific Co. via Los Angeles, Colton or Stockton.

14. Armour cars will be used exclusively for all rail citrus fruit and vegetables loaded on S. C. track destined — points on or reached via S. P. Co. north of Stockton and west of Grand Junction, Colo and Cheyenne, Wyo. (Also to points east of Colton, Cheyenne, and Grand Junction when special instructions authorize such routing.)

15. Advise shippers orders for Armour cars must be filed in sufficient time to obtain same from S. P. Co. although limited supply will be kept at Los Angeles and Colton to assist in promptly filling orders.

16. Santa Fe refrigerator despatch cars (empty) will be delivered to S. P. Co. at Los Angeles and Colton (and at Santa Ana for vegetables only from Newport branch) when for load to move east via S. C. Ry. from Los Angeles and Colton (via Santa Ana for vegetables from Newport branch).

EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Ass't General Freight Agent.

682 "Santa Fe."

Southern California Railway.

General Freight Dept.

Private.

Amendment No. 8 to Circular Letter 41–E, December, 1902.

(Amendments 3, 4, 5, 6, 7, and 8 in Effect.)

Effective July 1st, 1903, rates and divisions being cancelled on citrus fruit to southeasten points in connection with the K. C. M. & B. R. R., and Southern railway, and July 15th, in connection with the L. & N. R. R., all routing instructions either in whole or in part, over above roads, are cancelled.

Refer to mimeograph letter, July 6th, file 375 for method of obtaining eastbound rates.

Telegraph general freight agent for routing when shipments for southastern points offered.

EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Ass't General Freight Agent.

Los Angeles, Cal. July 13th, 1903.
W.

683 "Santa Fe."

Southern California Railway Co.

Private.

Amendment No. 7 to Circular Letter 41–E, December, 1902.

(Amendments 3, 4, 5, 6, and 7 in Effect.)

Agents Southern California railway:
Effective immediately, eliminate item 36.
Insert item 36: Boston, Mass. 15 % Santa Fe to K. K. K. care I. I. & I.
Michigan Cen. Erie, D. & H. Fitch.
Eliminate item 321, insert item No.
321: Sioux City, Iowa, Santa Fe to Denver, care of B. & M. C. St. P. M. & O.

W. EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Assistant Gen. Freight Agent.

Los Angeles, Cal. May 12, 1903.

684 "Santa Fe."

Southern California Railway Co.

Private.

Amendment No. 6 to Circular Letter 41–E, December 1st, 1902.

Amendments 3, 4, 5, and 6 in Effect.

To agents Southern California Ry.:
Effective immediately, eliminate item 31, insert item
31: Birmingham, Ala., Santa Fe to Kansas City, care of Frisco system. Where routing reads to southeastern points, "Santa Fe to Kansas City, care Frisco, Southern railway," correct to read "Santa Fe to Kansas City, Frisco to Memphis, thence Southern railway."
Eliminate item 97, insert item—

97: Deadwood, S. D., Santa Fe to Denver, case of Burlington.

EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Ass't Gen. Freight Agent.

Los Angeles, Cal. March 27th, 1903
W.

685 "Santa Fe"

Southern California Railway Company.

Private.

Amendment No. 5 to Circular Letter 41–E, December 1, 1902.

Amendments 3, 4, and 5 in Effect.

To agents Southern California Ry.:

Referring to item 6, circular letter 45–B of December 1, 1902: Citrus fruit from points north of and including Aliso if shipper requests may be routed via Colton or Los Angeles, c/o S. P. Co., when destined:

Amarillo, Texas.
Austin, Texas.
Bowie, Texas.
Cheyenne, Wyo.
Chickasa, I. T.
Cripple Creek, Colo.
Dallas, Texas.
Deadwood, S. D.
Denison, Texas.
Enid, O. T.
Ft. Worth, Texas.
Gainesville, Texas.
Galveston, Texas.
Houston, Texas.
Leadville, Colo.
Little Rock, Ark.
Malvern, Ark.
Monroe, La.
New Orleans, La.
Oklahoma City, O. T.
Pecos, Texas.
Rapid City, S. D.
Sepulpa, I. T.
San Antonio, Texas.
Shreveport, La.
South McAlister, I. T.
Temple, Texas.
Victor, Colo.
Waco, Texas.
Waxahachie, Texas.
Weatherford, Texas.

686 EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Ass't Gen. Freight Agent.

Los Angeles, Feb'y 6th, 1903.

687 "Santa Fe."

Southern California Railway Company.

Private.

Amendment No. 4 to Circular Letter 41-E, December 1, 1902 (Superseding Amendment No. 2, Amendments Nos. 3 and 4 in Effect).

To agents Southern California Ry.:

Effective immediately eliminate item 6 and insert item 6:
Albert Lea, Minn. Santa Fe to Kansas City c/o C R I & P.
Eliminate item 340, insert item
340: St. Louis, Mo. 80 %, Santa Fe to Bucklin, c/o E & St J, St I_4 K & N W
Insert item 119½
119½: Enid, O. T. Santa Fe to Burrton, c/o Frisco system.
Insert item 313½
313½: Sault Ste. Marie, Mich. Santa Fe to Kansas City c/o C M & St P c/o D S S & A at Champion.
Eliminate item 333 insert item
333: Springfield, Mass., 20 %, Santa Fe to K K K, I I I, L S & M S, N Y C & H R, B & M

EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Ass't Gen. Freight Agent.

Los Angeles January 22 1902

688 "Santa Fe."

Southern California Railway Company.

Private.

Amendment 3 to Circular Letter 41-E of December 1, 1902 (Amendment No. 2 in Effect).

Agents Southern California Ry.:

Effective immediately add item 259½
259½: Norwich, Conn., Santa Fe to K K K, c/o I I I, Erie, N Y N H & H
Correct item 23 to read
23: Ballston, N. Y. instead Ballston, Mass.
Eliminate item 317, insert item 317
317: Schenectady, N. Y. 60 % Santa Fe to K K K, c/o I I I, L S & M S, N Y V

317½: Schenectady, N. Y. 40 % Santa Fe to K K K, c/o I I I N Y C & St L, D L & W, D & H

EDWARD CHAMBERS,
General Freight Agent.

W. G. BARNWELL,
Ass't Gen. Freight Agent.

Los Angeles January 19, 1903.

689 (1.)

"Santa Fe."

Southern California Railway.

General Freight Department.

Circular Letter No. 41-E.

(Canceling Circular Letter No. 41-D.)

Los Angeles, December 1, 1902.

(Private.)

To agents Southern California railway:

Referring to circular letter No. 45 regarding forwarding of citrus fruit, effective January 1, 1900, you will route shipments of citrus fruit, originating at your station in accordance with the instructions herein given:

1. Destination and routes that you will use, and percentage of business that it is desired to send via different railroads *is* shown herein. You will, in forwarding shipments, divide between connecting lines in accordance with the proportions shown in this sheet.

2. Shipments to any point reached by Santa Fe system lines must follow its track to destination.

3. Shipments to points not shown in this list that are local on any connecting line, give the Santa Fe system longest possible haul and make reasonable direct route.

4. Shipments to points beyond Santa Fe system lines reached by more than one railroad, and that *is* not shown in the list of destinations given herein, you will forward by the most direct route, having in view the long haul for the Santa Fe system.

690 5. Shipments via Colton or Los Angeles to an eastern destination via Southern Pacific line, you will bill care of Southern Pacific Co. with no other routing, except specially instructed by this office; you may show on way bill when necessary points shippers desire car to pass through to reach certain markets in accordance with instructions in paragraph six. Agent of the Southern Pacific

Co. at Colton or Los Angeles, as case may be, will forward you immediately after billing an abstract of his way bill showing routing through to destination. This is done that you may be able to show on the bill of lading, if so desired by shipper, routing through, or give this information in any other form to shipper.

6. Shippers will be allowed to make following notation on shipping order covering shipments of citrus fruit and carrier will, so far as consistent, comply—

"Would prefer this car to pass through —— points that shipper may likely market the car to be shown in blank spaces but must in every instance be point reached by more than one railroad.

7. When a shipper asks for some particular delivery and you are satisfied that it is necessary to the business that it be given, and if the route is one authorized in this circular, you may route as the shipper desires so far as the delivering line is concerned. If any intermediate lines you will use such of them as will serve to divide the business in accordance with the proportion shown herein.

8. This circular is for the private information of the agent to whom it is sent, must be kept under lock and key and not to be shown to any outsiders or employé, except such employés as 691 have to use it in their station work, and representatives of the freight department and general officials of the Southern California railway. Agents will be held strictly accountable for the proper care of this circular.

	Agents will distribute shipments in accordance with percentages shown in this column.		
1 Aberdeen, S. D.		Santa Fe to "	K. C., K C St. J & C B, C M & St P
2 Akron, Ohio	50 per cent.	"	K K K c/o I I I, B & O
3 " "	50 per cent.	"	" " " Erie
4 Albany, N. Y.	50 per cent.	"	" " " G T, D L & W, D & H
5 " "	50 per cent.	"	" " " L S, W S
6 Albert Lea, Minn		"	" " C B & Q, B C K & N
7 Allentown, Pa.		"	" " I I I N Y C & St L, L V
8 Altoona, Pa.		"	" " " Penna

9	Amarillo, Texas		"	Trinidad c/o Cal. Southern
10	Amsterdam, N. Y.		"	K K K c/o III LS NYC
11	Arkansas City, Kan.		"	
12	Asheville, N. C.		"	K C " Frisco Line, So. Ry.
13	Ashland, Wis.		"	Superior, F E & M V, C S & P, M & O
14	Ashtabula, *C.*	50 per cent.	"	K K K c/o III, LS
15	" "	50 per cent.	"	" " " N Y C & St L
16	Atchison, Kas.		"	
17	Atlanta, Ga.		"	K C, c/o Frisco, So. Ry.
18	Auburn, Maine		"	K K K c/o III Wabash, C P, Me. Cen.
19	Auburn, N. Y.		"	K K K c/o III, LS, N Y C.
20	Aurora, Neb.		"	Denver c/o B & M
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21	Austin, Texas		Santa Fe to "	Milano Jct c/o I & G N
22	Aspen, Col.		"	Col. Sprgs. c/o Col. Midland
23	Ballston, N. Y.		"	K K K c/o III, N Y C & St L, D L & W, B & H
24	Baltimore, Md.	80 per cent.	"	" c/o III, B & O
25	"	20 per cent.	"	" " Penna.
26	Bangor, Maine,		"	" " Wab. C.P. Me. Cen.
27	Battle Creek, Mich.		"	" " G T.
28	Bay City, Mich.	60 per cent.	"	" " G T, F & P M
29	Bay City, Mich.	40 per cent.	"	" " Mich Cent.
30	Binghampton, N. Y.		"	" " N Y C & St L. D L & W.
31	Birmingham, Ala.		"	K C c/o Frisco, So. Ry.

32	Bloomington, Ill.	80 per cent.	"	Toluca c/o Ill.Cent.
33	"	20 per cent.	"	K C c/o C & A.
34	Boston, Mass.	15 per cent.	"	K K K c/o I I I, Ls, W S, Fitchburg
35	"	30 per cent.	"	" " G T, N D L.
36	"	15 per cent.	"	" " Mc, D & H, Fitch.
37	"	10 per cent.	"	" " N Y C & St L. D L & W, D & H (Fitchburg.)
38	"	30 per cent.	"	" " C P Des. Fitchburg.
39	Bowie, Texas		"	Trinidad c/o Colo So.
40	Bradford, Pa.		"	K K K c/o I I I, M C. B R & P
41	Brandon, Man.	80 per cent.	"	K C c/o C G W., Nor. Pac.
42	"	20 per cent.	—	" " C M & St P. G N. C P.
43	Brantford, Ont.		—	K K K " I I I, G T.
44	Bridgeport, Conn.		"	" " Penna, N Y N H & H.
45	Brownwood, Texas		"	
46	Buffalo, N. Y.	20 per cent.	"	K K K c/o I I I, L S & M S.
47	"	20 per cent.	"	" " Mich. Cent.
48	"	40 per cent.	"	K K K c/o I I I, Grand Trunk
49	"	20 per cent.	"	" " N Y C & St L.

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Santa Fe to

50	Burlington, Iowa		"	Bucklin c/o C B & Q.
51	Burlington, Vt.		"	K K K c/o I I I Grand Trunk
52	Cairo, Ill.		"	K C c/o C B & Q, M & O
53	Canon City, Col.		"	
54	Carthage, Mo.		"	" c/o Mo. Pac.
56	Catskill, N. Y.		"	K K K c/o I I I, M C, W S
56	Cedar Rapids, Ia.	100 per cent.	"	" c/o C M & St P
57	Centralia, Ill.		—	Pekin c/o C P & St L, J & St L.

9	Amarillo, Texas		"	Trinidad c/o Cal. Southern
10	Amsterdam, N. Y.		"	K K K c/o III L S N Y C
11	Arkansas City, Kan.		"	
12	Asheville, N. C.		"	K C " Frisco Line, So. Ry.
13	Ashland, Wis.		"	Superior, F E & M V, C S & P, M & O
14	Ashtabula, *C.*	50 per cent.	"	K K K c/o III, L S
15	" "	50 per cent.	"	" " " N Y C & St L
16	Atchison, Kas.		"	
17	Atlanta, Ga.		"	K C, c/o Frisco, So. Ry.
18	Auburn, Maine		"	K K K c/o III Wabash, C P, Me. Cen.
19	Auburn, N. Y.		"	K K K c/o III, L S, N Y C.
20	Aurora, Neb.		"	Denver c/o B & M
692				
21	Austin, Texas		Santa Fe to "	Milano Jct c/o I & G N
22	Aspen, Col.		"	Col. Sprgs. c/o Col. Midland
23	Ballston, N. Y.		"	K K K c/o III, N Y C & St L, D L & W, B & H
24	Baltimore, Md.	80 per cent.	"	" c/o III, B & O
25	"	20 per cent.	"	" " Penna.
26	Bangor, Maine,		"	" " Wab. C. P. Me. Cen.
27	Battle Creek, Mich.		"	" " G T.
28	Bay City, Mich.	60 per cent.	"	" " G T, F & P M
29	Bay City, Mich.	40 per cent.	"	" " Mich Cent.
30	Binghampton, N. Y.		"	" " N Y C & St L. D L & W.
31	Birmingham, Ala.		"	K C c/o Frisco, So. Ry.

32	Bloomington, Ill.	80 per cent.	"	Toluca c/o Ill.Cent.
33	"	20 per cent.	"	K C c/o C & A.
34	Boston, Mass.	15 per cent.	"	K K K c/o I I I, Ls, W S, Fitchburg
35	"	30 per cent.	"	" " G T, N D L.
36	"	15 per cent.	"	" " Mc, D & H, Fitch.
37	"	10 per cent.	"	" " N Y C & St L. D L & W, D & H (Fitchburg.)
38	"	30 per cent.	"	" " C P Des. Fitchburg.
39	Bowie, Texas		"	Trinidad c/o Colo So.
40	Bradford, Pa.		"	K K K c/o I I I, M C. B R & P
41	Brandon, Man.	80 per cent.	"	K C c/o C G W., Nor. Pac.
42	"	20 per cent.	—	" " C M & St P. G N. C P.
43	Brantford, Ont.		—	K K K " III, G T.
44	Bridgeport, Conn.		"	" " " Penna, N Y N H & H.
45	Brownwood, Texas		"	
46	Buffalo, N. Y.	20 per cent.	"	K K K c/o I I I, L S & M S.
47	"	20 per cent.	"	" " " Mich. Cent.
48	"	40 per cent.	"	K K K c/o I I I, Grand Trunk
49	"	20 per cent.	"	" " " N Y C & St L.

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Santa Fe to

50	Burlington, Iowa		"	Bucklin c/o C B & Q.
51	Burlington, Vt.		"	K K K c/o I I I Grand Trunk
52	Cairo, Ill.		"	K C c/o C B & Q, M & O
53	Canon City, Col.		"	
54	Carthage, Mo.		"	" c/o Mo. Pac.
56	Catskill, N. Y.		"	K K K c/o I I I, M C, W S
56	Cedar Rapids, Ia.	100 per cent.	"	" c/o C M & St P
57	Centralia, Ill.		—	Pekin c/o C P & St L, J & St L.

58	Charleston, S. C.	75 per c. c. d.	"	K C c / o Frisco So. Ry.	
59	" "	25 per cent	"	K C M P So. Ry.	
60	Chattanooga, Tenn	75 per cent.	"	K C c / o Frisco So. Ry.	
61	" "	25 per cent	"	K C c / o Mo. Pacific So. Ry.	
62	Cherokee, Iowa		"	Denver c / o B & M	
63	Cheyenne, Wyo		"	Trinidad c / o Col. Son.	
64	Chicago, Ill		"		
65	Chickasha, I. T.		"	Pueblo c / o C R I & P.	
66	Cincinnati, O.	20 per cent	"	Mazon c / o Big Four	
67	" "	60 per cent	"	K K K c / o I I I P C C & St L.	
68	" "	20 per cent	"	" " " " Monon	
69	Clarksburg, W Va.		"	" " " " B & O.	
70	Cleveland, O.	20 per cent	"	" " " " L S	
71	" "	60 per cent	"	" " " " N Y C & St L.	
72	" "	20 per cent	"	" " " " Erie.	
73	Clinton, Iowa	20 per cent	"	K C c / o C M & St P.	
74	" "	80 per cent	"	" " " " C B & Q.	
75	Colorado Sprgs, Col.		"		
76	Columbia, S. C.		"	K C c / o Frisco So. Ry.	
77	Columbia, Pa		"	K K K " I I I Penna.	
78	Columbus, Ga	80 per cent	"	K C " Frisco So. Ry.	
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			Santa Fe to		
79	Columbus, Ga.	20 per cent	"	K C c / o M P So Ry.	
80	Columbus, Ohio	30 per cent	"	Mazon c / o Big Four	
81	" "	30 per cent	"	K K K c / o I I I P C C & St L	
82	" "	20 per cent	"	" " " " B & O	
83	Connellsville, Pa.		"	" " " " Penna. B & O	
84	Cortland, N. Y.		"	" " " " N Y C & St L D L & W	
85	Council Bluffs, Ia.		"	Denver c / o C B & Q	
87	Creston, Iowa		"	K C c / o C B & Q	
88	Cripple Creek, Col		"	Col Sprgs. c / o Col. Midland	
89	Crookston, Minn.		"	K C c / o C M & St P, G N	

Cumberland, Md.		"	K K K c/o P R R & B & O
Dallas, Texas		"	
Davenport, Ia.	40 per cent	"	K C c/o C M & St P
" "	60 per cent	"	K C c/o C B & Q
Dayton, Ohio	25 per cent.	"	K K K c/o P R R Monon C H & D
" "	25 per cent.	"	Mazon c/o Big Four
" "	50 per cent.	"	K K K c/o P R R C C & St L
Deadwood, S. D.		"	Superior c/o F E & M V
Defiance, Ohio.		"	K K K c/o P R R & B & O
Denison, Texas.		"	Sherman c/o St L & S F
Denver, Col.		"	
Des Moines, Ia.	50 per cent.	"	K C c/o C G W
" " "	50 per cent.	"	St Joe c/o C B & Q
De Soto, Wis.		"	K C c/o C B & Q
Detroit, Mich.	20 per cent.	Santa Fe to	K K K c/o P R R L S
" "	10 per cent.	" " " "	M C
" "	40 per cent.	" " " "	G T
Dubuque, Iowa	25 per cent.	"	K C c/o C M & St P
" "	75 per cent.	"	K C c/o C G W
Duluth, Minn	75 per cent.	"	K C c/o C B & Q G N
" "	25 per cent.	"	K C c/o C G W S P & D
Dunkirk, N. Y.		"	K K K c/o P R R L S & M S
Easton, Pa.		"	K K K c/o P R R N Y C & St L L V
Eau Claire, Wis.		"	K C c/o C M & St P
Edgemont, S. D.		"	Denver c/o B & M
Elgin, Ill.		"	K C c/o C M & St P
Elmira, N. Y.	80 per cent.	"	K K K c/o P R R Erie
" "	20 per cent.	"	" " " G T
			D L & W
El Paso, Texas		"	
Emporia, Kan.		"	
Erie, Pa.		"	K K K c/o P R R L S & M S
Evansville, Ind.		"	Pekin c/o P D & E
Fairmont, W. Va.		"	K K K c/o P R R B & O
Fall River, Mass.		"	" " " Penna. N Y N H & H

180	Jonesboro, Ark.		"	K C c/o K C F S & M
181	Joplin, Mo.	50 per cent.	"	K C c/o Mo Pac
182	" "	50 per cent.	"	K C c/o K C F S & M
183	Kalamazoo, Mich.		"	K K K c/o G T at Chgo, G R & I
184	Kansas City, Mo.		"	
185	Keene, N. H.		"	K K K c/o I I I G T B M
186	Keokuk, Iowa,		"	K C c/o C B & Q
187	Kingston, N. Y.		"	K K K c/o I I I Wab L S W S
188	Kingston, Ont.		"	K K K c/o I I I G T
189	Knoxville, Tenn.		"	K C c/o Frisco, So Ry
190	La Crosse, Wis.	40 per cent.	"	K C c/o C M & St P
191	" " "	60 per cent.	"	KC c/o C B & Q
192	Lafayette, Ind.		"	Mazon c/o Big Four

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193	Lawrence, Kas		Santa Fe to ——	
194	Leadville, Col.		"	Trinidad c/o Colo. & So.
195	Leavenworth, Kan		"	
196	Lebanon, Pa.		"	K K K c/o I I I N Y & St L V P & R
197	Lehighton, Pa.		"	" " " N Y C & St L L V
198	Lewiston, Me.		"	K K K c/o I I I G T
199	Lima, Ohio	50 per cent.	"	" " " Erie
200	" "	50 per cent.	"	" " " Penna
201	Lincoln, Neb.		"	Denver c/o B & M
202	Little Rock, Ark.		"	K C c/o Mo Pacific
203	Logansport, Ind.		"	K K K c/o I I I P C C & St L
204	London, Ont.		"	" " " Wab C P Des M C
205	Louisville, Ky.	50 per cent.	"	" " " P C C & St L
206	" "	50 per cent.	"	Mazon c/o Big Four
207	Lynchville —		"	" " " C & O
208	Macon, Ga.		"	K C c/o Frisco So Ry
209	Malone N. Y.		"	K K K c/o I I I M C N Y C

210	Malvern, Ark.		"	Oklahoma City c/o C O & G
211	Manchester, N. H.		"	K K K c/o I I I L S N Y C B & M
212	Mankato, Minn.	50 per cent.	"	K C c/o C & G W
213	" "	50 per cent.	"	K C c/o C M & St P
214	Mansfield, Ohio	40 per cent.	"	K K K c/o I I I Penna
215	" "	20 per cent.	"	" " " " B & O
216	" "	40 per cent.	"	" " " " Erie
217	Marietta Ohio		"	" " " " Penna
218	Marion, Ohio	50 per cent.	"	Mazon c/o Big Four
219	" "	50 per cent.	"	K K K c/o I I I Erie
220	Marion, Ind.		"	" " " " P C C & St L
221	Marshalltown, Iowa	25 per cent.	"	K C c/o C M & St P Iowa Central
222	" "	75 per cent.	"	K C c/o C G W
700				
223	Mason City, Iowa,		Santa Fe to	K C c/o C M & St P
224	McCook, Neb.		"	Denver c/o B & H
225	Memphis, Tenn.	75 per cent.	"	Kansas City c/o Frisco
226	" "	25 per cent.	"	Kansas City c/o Mo Pac.
227	Menominee, Mich.		"	Kansas City c/o C M & St P
228	Milwaukee, Wis.	25 per cent.	"	Kansas City c/o C M & St P
229	" "	75 per cent.	"	Chicago c/o Wis Central
230	Minden, Neb.		"	Denver c/o B & *M*
231	Minneapolis, Minn.	25 per cent.	"	K C c/o C M & St P
232	" "	75 per cent.	"	K C c/o C G W
233	Monett, Mo.		"	Burrton c/o St L & S F
234	Monmouth, Ill.	25 per cent.	"	K C c/o C B & Q
235	" "	75 per cent.	"	Nemo c/o Iowa Central.
236	Monroe, La.		"	Pueblo c/o Mo Pac
237	Montgomery, Ala.		"	K C c/o Frisco So Ry

238	Montreal, Quebec	50 per cent.	"	K K K c/o I I I Wab C P
239	" "	50 per cent.	"	" " " Grand Trunk
240	Muskegon, Mich.		"	" " " " Pere Marquette
241	Muncie, Ind.		"	Mazon c/o Big Four
242	Munsey Ill.		"	" " " "
243	Nashville, Tenn.	100 per cent.	"	K C c/o Frisco N C & St L
244	Nebraska City, Neb.		"	Denver c/o C B & Q
244½	Newark N. J.		"	K K K c/o I I I Erie
245	Newark, Ohio	50 per cent.	"	K K K c/o I I I B & O
701				
246	Newark Ohio	50 per cent.	Santa Fe to	K K K c/o I I I P C C & St L
247	New Bedford, Mass		"	" " " " P R R N Y N H & H
248	New Britain, Conn		"	" " " " P R R N Y N H & H
249	Newburgh, N. Y.		"	" " " " Erie
250	New Castle, Pa.		"	" " " " Penna
251	New Haven, Conn.		"	" " " " M C W S N Y N H & H
252	New Orleans, La.		"	K C c/o Frisco Ill Cen
253	Newton, Kansas		"	
254	New York, N. Y.	25 per cent.	"	K K K c/o I I I Erie
255	" " "	10 per cent.	"	" " " " B & O
256	" " "	30 per cent.	"	" " " " L S Erie
257	" " "	35 per cent.	"	" " " " G T Erie
258	Norfolk, Va.		"	Mazon c/o Big Four C & O
259	No. Adams, Mass		"	K K K c/o I I I L S N Y C B & A
260	Oklahoma, O. T.		"	
261	Oil City, Pa.		"	K K K c/o I I I Erie
262	Omaha, Neb.		"	Denver c/o C B & Q
263	Oneida, N. Y.		"	K K K c/o I I I L S N Y C

264	Oneanta, N. Y.		"	K K K c/o I I I L S D L & W D & H
265	Oskaloosa, Iowa	30 per cent.	"	K C c/o C M & St P Ia Cen
266	" "	70 per cent.	"	K C c/o C B & Q
267	Oshkosh, Wis.		"	K C c/o C M & St P
268	Ottawa, Ont.	50 per cent.	"	K K K c/o I I I Wab C P
269	" "	50 per cent.	"	K K K c/o I I I G T
270	Ottumwa, Iowa,		"	St. Joe c/o C B & Q
271	Parkersburg, W. Va.		"	K K K c/o I I I B & O
272	Pecos, Texas,		"	Trinidad c/o Col. So. to Amarillo, c/o system beyond
273	Peoria Ill.	30 per cent.	"	Nemo c/o Ia. Central.

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274	Peoria, Ill.	70 per cent.	Santa Fe to	K C c/o C B & Q
275	Petersburg, Va.		"	K K K c/o I I I Erie N & W
276	Philadelphia	50 per cent.	" " " "	Penna
277	"	25 per cent.	" " " "	B & O
278	"	25 per cent.	" " " "	G T L V P & R
279	Piqua, Ohio,		" " " "	P C C & St L
280	Pittsburg, Kan.		"	
281	Pittsburgh, Pa.	30 per cent.	"	K K K c/o I I I B & O
282	" "	70 per cent.	" " " "	Penna
283	Pittsfield, Mass.	50 per cent.	" " " "	L S N Y C B & A
284	" "	50 per cent.	" " " "	Penna N Y N H & H
285	Portland, Me.		" " " "	Grand Trunk
286	Pottsville, Pa.		" " " "	Penna
287	Poughkeepsie, N.Y.		" " " "	L S N Y C
288	Providence, R. I.	25 per cent.	" " " "	Erie N Y N H & H via Newburg
289	" "	25 per cent.	" " " "	Gt L V N Y N H & H via Harlem river

290	" "	25 per cent.	"	" " " Penna N Y N H & H via Harlem river
291	" "	25 per cent.	"	" " " M C W S N Y N H & H via Newburg
292	Pueblo, Col.		"	
293	Quebec, Quebec	50 per cent.	"	K K K c/o I I I Wabash C P
294	" "	50 per cent.	"	" " " G T
295	Quincy, Ill.		"	Bucklin c/o C B & Q
296	Racine, Wis.		"	K C c/o C M & St P
297	Rapid City S. D.		"	Superior c/o F E & M V
298	Reading, Pa.		"	K K K c/o I I I N Y C & St L L V P & R
703				
299	Richmond, Va.		Santa Fe to Mexon c/o Big Four C & O	
300	Richmond, Ind.		"	K K K c/o I I I Penna
301	Rochester, N. Y.	30 per cent.	"	" " " L S N Y C
302	" "	50 per cent.	"	" " " Erie
303	" "	20 per cent.	"	" " " N Y C & St L L V
304	Rockford, Ill.		"	Toluca c/o Ill. Central
305	Rutland, Vt.		"	K K K c/o I I I Erie D & H
306	Saginaw, Mich.	50 per cent.	"	K K K c/o I I I Pere Marquette
307	" "	50 per cent.	"	" " " Grand Trunk
308	Salina, Kan.		"	
309	Sapulpa, I. T.		"	Oklahoma City c/o St L & S F
310	Sandusky, Ohio		"	K K K c/o I I I L S
311	San Antonio, Texas		"	Milano Jctn c/o I & G N
312	Sarina, Ont.		"	K K K c/o I I I G T
313	Saranac Lake, N. Y.		"	" " " L S N Y C
314	Savannah, Ga.	50 per cent.	"	Kansas City c/o Frisco So. Ry
315	" "	50 per cent.	"	Kansas City c/o M P So Ry

316	Scranton, Pa.		"	K K K c/o I I I L S D L & W
317	Schenectady, N. Y.		"	" " " c/o L S N Y C
318	Sedalia, Mo.		"	Kansas City c/o Mo Pacific
319	Shamokin, Pa.		"	K K K c/o I I I Penna
320	Shreveport, La.		"	Kansas City c/o K C S
321	Sioux City, Iowa		"	Denver c/o B & *M*
322	Sioux Falls, S. D.		"	K C c/o M P & C St P M & O
323	Smith Falls, Ont.		"	K K K c/o I I I Wabash Can Pac
324	So. Norwalk, Conn.		"	K K K c/o I I I P R R N Y N H & H
325	South Bend, Ind.		"	K K K c/o I I I
326	So. McAllister, I. T.		"	Okla City c/o O C & G
704				
327	Springfield, Mo.		Santa Fe to Kansas City c/o Frisco	
328	Springfield, Ill.	50 per cent.	"	Kansas City c/o O & A
329	" "	50 per cent.	"	Kansas City c/o Wabash
330	Springfield, Ohio	50 per cent.	"	Mazon c/o Big Four
331	" "	50 per cent.	"	K K K c/o I I I P C C & St L
332	Springfield, Mass.	25 per cent.	"	K K K c/o I I I P R R N Y N H & H
333	" "	20 per cent.	"	" " " L S N Y C B & A
334	" "	20 per cent.	"	" " " G T L V N Y N H & H
335	" "	35 per cent.	"	" " " Wabash C P Des
336	St. Johns, Quebec	50 per cent.	"	" " " G T
337	" "	50 per cent.	"	" " " Wabash C P
338	St. Joseph, Mo.		"	
339	St. Louis, Mo.	20 per cent.	"	Kansas City c/o Mo Pacific

340	"	"	80 per cent.	"	"	"	"	c/o C B & Q
341	St. Paul, Minn.		25 per cent.	"	"	"	"	" C M & St P
342	"	"	75 per cent.	"	"	"	"	" C G W
343	St. Thomas, Canada		60 per cent.	"	K K K c/o I I I Wabash Can Pac			
344	"	"	40 per cent.	"	"	"	"	" G T
345	Staunton, Va			"	Mazon c/o Big Four C & O			
346	Stevens Pt. Wis.			"	Chicago c/o C & N W			
346½	Streator, Ill.			"				
705								
347	Syracuse, N. Y.		20 per cent.	Santa Fe to	K K K c/o I I I N Y C & St. L D L & W			
348	"	"	20 per cent.	"	"	"	"	L S N Y C
349	"	"	45 per cent.	"	"	"	"	G T D L & W
350	"	"	15 per cent.	"	"	"	"	M C W S
351	Temple Texas			"				
352	Terre Haute Ind.			"	Morton c/o Vandalia			
353	Toledo, Ohio			"	K K K c/o I I I L S			
354	Topeka, Kan.			"				
355	Toronto, Can.		50 per cent.	"	"	"	"	Wabash C P
356	"	"	50 per cent.	"	"	"	"	G T
357	Trinidad, Col.			"				
358	Troy, N. Y.			"	"	"	"	L S Erie
359	Utica, N. Y.		50 per cent.	"	"	"	"	L S N Y C
360	"	"	50 per cent.	"	"	"	"	G T D L & W
361	Van Wart, Ohio			"	"	"	"	Penna
362	Victor, Col.			"	Col. Springs c/o Col. Midland.			
363	Vincennes, Ind.			"	Pekin c/o Big Four			
364	Waco, Texas,			"	Cameron c/o S A & A P			

365	Wahpeton, N. D.		"	Kansas City c/o C M & St P
366	Warren, Ohio	50 per cent.	"	K K K c/o I I I Erie
367	" "	50 per cent.	" " " " Penna
368	Watuppa, Mass		" " " " P R R N Y N H & H
369	Waukegan, Ill.,	50 per cent.	"	Joliet c/o C & M W
370	" "	50 per cent.	" " " E J & E
371	Washington, D. C.	50 per cent.	"	K K K c/o I I I B & O
372	" "	50 per cent.	" " " " Penna
373	Watertown, S. D.		"	Superior c/o C St P M & O
374	Watertown, N. Y.		"	K K K c/o I I I L S N Y C
706				
375	Waterbury, Conn.		Santa Fe to	K K K c/o I I I Penna N Y N H & H
376	Wausau, Wis.		"	Kansas City c/o C P & St P
377	Waterloo, Iowa		" " " " C G W
378	Waxahachie, Texas		"	Fort Worth c/o M K & T
379	Weatherford, Texas		"	
380	Wellsville, N. Y.		"	K K K c/o I I I L S Erie
381	West Superior, Minn.		"	Kansas City c/o C G W E Minn
382	Wheeling, W. Va.		"	K K K c/o I I I B & O
383	White River Jct. Vt.		"	K K K c/o I I I G T
384	Wichita, Kansas		"	
385	Wilkesbarre, Pa.		"	K K K c/o I I I N Y C & St L L V
386	Winnipeg, Man.	25 per cent.	"	Kansas City c/o C M & St P N P
387	" "	75 per cent.	"	" " " C G W N P
388	Winfield, Kansas		"	
389	Woodsville, N. H.		"	K K K c/o I I I P & R N Y N H & H B & M
390	Worcester, Mass.	50 per cent.	"	" " " M C W S B & M

391	" "	50 per cent.	"	" " "	"
392	Winona, Minn.		"	Can. Pacific Kansas City c/o C M & St P	
393	York, Pa.,		"	K K K c/o I I I	
394	Youngstown, O.	40 per cent.	"	" " "	Penna
395	" "	30 per cent.	"	" " "	Lake shore
396	" "	30 per cent.	"	" " "	Erie
397	Zanesville, Ohio	50 per cent.	"	K K K c/o I I I	Penna
398	" "	—	"	" " "	B & O P C & St L C & M V

EDWARD CHAMBERS,
General Freight Agent.

W. S. BARNWELL,
Ass't General Freight Agent.

707 By Mr. CALL:

Q. What other papers have you brought, Mr. Barnwell?

A. You have asked for letters, instructions, routing sheets, percentage tables, and so forth. Now, all our instructions are contained in that circular. There possibly have been some letters exchanged between agents independent of that circular, and I think I have them all here and can read them as we go along.

Q. I don't want anything here unless it is material to the routing question.

A. No.

Q. And if you will allow me to look at them, perhaps——

A. These are material to the routing question.

Q. You say they are or are not?

A. Yes sir, they are. I want to say that those are our original office files, Mr. Call.

Q. Yes. Some of these letters are not signed. They are office copies?

A. Yes. They may have been over the signature of Mr. Chambers or over my own signature.

Q. They were signed by somebody in authority?

A. They were signed by either Mr. Chambers or myself—that is, either Mr. Chambers' name or my name were signed to those letters that have gone out from our office.

Q. Who is Mr. Conway?

A. Conway at that time was a clerk in charge of routings in my office.

Q. What other papers, Mr. Barnwell, have you produced?

A. I believe that is all, Mr. Call. Oh. You asked about—

708 you asked for these——

Q. Table of percentages.

A. Division of the rate.

Q. Yes, divisions of the rate.

A. That also is in the same position as the joint tariffs which I had to send away for. I just have one in the office.

Q. And you will produce that?

A. I will produce that, yes sir. I have a telegram from Mr. Countiss this morning that he has mailed them. There is an east-bound tariff that you asked me for in your memorandum, present joint east-bound tariff, covering commodities other than citrus fruit, if you care for it. You didn't ask for it in your subpœna, but I brought it along in case you wanted it.

Mr. CALL: Well, I don't want to burden the record with anything that is not clearly relevant to the issues. As we have the tariff on citrus fruits, I think that will be all that is necessary. Well, that is all, Mr. Barnwell.

Cross-examination.

By Mr. NORTON:

Q. Let me have those exhibits. (Complainant's Exhibits 11, 12 and 13 handed to counsel.) This Santa Fe system tariff, No. 5,930 D, which has just been introduced in evidence and marked Complainant's Exhibit 11, is called an east-bound special tariff. What does that mean?

A. Applies only to the commodities named therein.

Q. And the commodities named therein are oranges, lem-

709 ons and grape fruit. Is that what you call the citrus fruit?

A. Yes sir.

Q. Now, as to the citrus routing circular of 1901 and 1902, which has been introduced as Complainant's Exhibit 12, and the routing circular of 1902 and 1903 which has been introduced in evidence as Complainant's Exhibit 13, are they substantially the same or do they differ?

A. If there are any differences, I think they are slight and have probably been brought about by reason of shippers or consignees giving good and sufficient reasons for recognizing the deliveries that they might ask for, and we have embodied those in the later issue so as not to be burdened with trying to look after individual requests, as we have done in previous years.

Q. What I want to get at is whether the text, without reading it over, of the last circular letter down as far as the table of distributions is the same or substantially the same as the circular of 1901 and 1902?

A. I think it is.

Q. Can you say whether it is verbatim?

A. I cannot, but my impression is it is.

Q. Then, I will confine my examination to this circular of 1902 and 1903. Paragraph 12 of this circular, dated December 1, 1902, circular letter number 45 E says that—paragraph 12 says that "Armour cars will not be placed for loading on S. C. railway." That means Southern California railway?

A. Yes sir.

710 Q. "When for East by way of Barstow or to system points north of Barstow." What does that mean and why was the regulation made?

A. It means that we have equipment enough of our own to take care of the business offered for shipment by our line.

Q. Who handle the Armour cars?

A. This year?

Q. At this time, that you objected to receive them?

A. The Southern Pacific.

Q. And what is the practice about taking the cars of another company? Are you required to pay mileage on them?

A. Pay mileage, or per diem, yes sir.

Q. On any car you receive?

A. Yes sir.

Q. Whether refrigerator or not?

A. Yes sir.

Q. Paragraph 13 says: "The Santa Fe Refrigerator Dispatch cars will not be placed for loading on the Southern California railway when routed to any point on or reached by way of the Southern Pacific Company by way of Los Angeles, Colton or Stockton." Whose cars are the Santa Fe Refrigerator Dispatch?

A. The Santa Fe Refrigerator Dispatch is an auxiliary company, as I understand it, of the Santa Fe system.

Q. Well, I mean are they cars used by the Santa Fe system or the Southern Pacific system?

A. By the Santa Fe system.

Q. And what reason is there for not letting them go to the Southern Pacific?

A. The Southern Pacific have the Armour cars, and, as I
711 understand it, sufficient to take care of the business that may offer for shipment by their line.

Q. For the same reason that you object to the Armour cars.

A. Precisely.

Q. Now, Mr. Barnwell, the body of this routing circular for 1901 and 1902, and 1902 and 1903, which is the same as that for 1901 and 1902—and do you remember whether the one for the previous year was the same as for these two years?

A. I think it was.

Q. —consists of circular letter number 41 E, dated December 1, 1902, states, in the second paragraph of instructions to agents of the Southern California Railway Company, that "shipments to any point

reached by the Santa Fe system lines must follow its track to destination." I will ask you whether that was an invariable rule, or whether it was departed from?

A. It was departed from, yes sir.

Q. In what circumstances?

A. Well, we have a great many points in Texas on our line. We are making slow time from the junction of our Gulf, Colorado & Santa Fe, which is the Texas line, from our main line, and we thought it would be working a hardship upon the shippers and receivers of citrus fruit, and immediately allowed such shipments to travel by any route—or by the Southern Pacific route, if so desired by the shipper.

Q. Did you in fact route over the Southern Pacific?

A. Yes sir.

712 Q. The purpose of paragraph 2, then, is general in its application, that the Santa Fe railroad would be followed as far as good service would permit?

A. Yes sir.

Q. Paragraph 6 says the shippers will be allowed to note on the shipping order the stations through which they would like to have the car go, points the shipper may likely market the car to be shown in the blank spaces. I will ask whether in practice shippers made these indications?

A. In a few instances I think they have, and their requests were acceded to according to that circular.

Q. Paragraph 7 states that when the shipper asks for some particular delivery and you are satisfied that it is necessary for the business to be given, if the route is one authorized by this circular, you may route as the shippers desires so far as the delivering line is concerned. I will ask whether in practice you deferred to the wishes of the shipper in this particular?

A. Yes sir.

Q. When the shipper asks for some particular delivery.

A. Yes sir.

Q. Can you state from correspondence or from memory or otherwise any concrete instance of respecting the shipper's wishes and carrying out his desires in this respect?

A. Yes sir.

Q. If you can, I wish you would show them.

A. The first one I come to. I have here a letter written by A. B. Hough, assistant general freight agent of the Big-Four route.

713 Mr. CALL: It is understood that this cross examination is subject to all legal objections, is it?

Mr. NORTON: Yes.

A. (Continuing:) Cleveland, Ohio, under date of January 22nd, 1902, addressed to E. H. Davis, Chicago, Illinois.

By Mr. NORTON:

Q. Who is Davis?

A. Davis at that time was manager of our refrigerator line. "A. G. Stearns, Highlands, California, is shipping oranges to A. C. Blair & Company, Cleveland. There were two cars shipped a day or two ago. Consignees say they are anxious to have these cars reach Cleveland over our rails. Shippers say routing is in your hands. I will appreciate it if you will have all carload shipments of oranges consigned to A. C. Blair & Company, Cleveland, forwarded by Big Four railway. You can deliver them to us at any junction you may desire. You will probably hear from Mr. Aird about this." It is signed "A. B. Hough," with the initial "W" under it.

Q. What company is that?

A. The Big Four Company.

Q. Who was Hough?

A. Hough is the assistant general freight agent of that company, located at Cleveland, Ohio.

Q. What was done about his request?

A. Mr. Davis referred it to Mr. Chambers, under date of January 23rd.

Q. Well, you need not read that. What did Mr. Chambers do about it? First, who is Mr. Chambers?

A. Mr. Chambers is the general freight agent of the Santa Fe lines west of Albuquerque.

Q. What did he do about it?

714 A. A letter was written to Mr. Aird, Santa Fe general agent at Cleveland, under date January 29, 1902, reading as follows: "Mr. Hough, of the Big Four, writes to Mr. E. H. Davis that shipments of citrus fruit consigned to A. C. Blair & Company, Cleveland, be routed by Big Four. I have said to Mr. Davis that we could not undertake to recognize individual routing orders. To do so would be to burden ourselves with something to which we could not give proper attention. We aim to give the Big Four a good share of the citrus business, and at the end of the season I am satisfied that it will agree that we have. They must not measure the amount of business that we are giving them by what they get to any particular point. In cases where we are working a hardship upon the receivers by our general routing instructions, of course we are willing to consider their requests; and to that end, I would like to ask for your recommendations in this particular case."

Q. That was addressed to whom?

A. Mr. Aird, our general agent at Cleveland. There crossed that letter in the mail a letter from Mr. Aird addressed to myself bearing date January 27, reading as follows: "A. C. Blair & Company, Cleveland——"

Q. What year?

A. January 27, 1902. "A. C. Blair & Company, Cleveland, have requested me to arrange for Big Four delivery at Cleveland on their

orange shipments from A. G. Stearns, Highlands, Redlands Orange Growers' Association, Redlands and West American Fruit Company, Redlands, California. It is their desire that future shipments
715 be routed Santa Fe, care Big Four, at Mazon, Illinois. If consistent, please comply with their request."

By Mr. CALL:

Q. Who is that letter from?

A. That was from Mr. Aird, our general agent at Cleveland.

Mr. CALL: May I ask a question there, Mr. Norton?

Mr. NORTON: Yes.

By Mr. CALL:

Q. What did he mean by "if consistent," in that letter?

A. Well, I don't know, unless that it is a sort of a general term that is put in correspondence. There is no significance to me in that. My reply to Mr. Aird—whether this letter went out over my signature or that of Mr. Chambers I am unable to say.

By Mr. NORTON:

Q. The reply was by your department?

A. The reply was by our department, under date of February 4, 1902, to Mr. G. A. Aird, general agent, Cleveland. "Dear Sir: Your file A 1829, January 27. It is a difficult matter to recognize individual routing instructions on citrus business, owing to the volume that we have to handle. However, we will endeavor to comply with your wishes in this respect and give A. C. Blair & Company business to the Big Four at Mazon." I turned it out to our routing clerk, with instructions to try and observe.

Q. Can you state whether the request was observed?

A. Yes sir, it was.

Q. What company was that that asked for the division in the first place?

A. Big Four route, known as the—or, put it this way, please:
716 The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, known as the Big Four route.

Q. And this request was that for shipment of fruit billed to Cleveland you would put it on the Big Four at Mazon?

A. Yes sir.

Q. And this correspondence is in line with the request in the *subpœna duces tecum* that you bring letters between traffic officers of the Santa Fe lines, defendant, and traffic officers of other lines?

A. I take it to be.

Q. I will ask you to state whether this letter is an example of any correspondence or any transactions that you have had with connecting carriers about the distribution of freight to their rails after leaving your own?

A. It is.

Q. Have you ever had any different understandings or arrange-

ments with connecting carriers as to what proportion of the traffic they would receive?

A. I have not; nor do I know that any of our officers have.

Q. Has your department?

A. No sir, not to my knowledge.

Q. Does the business that you have done in this respect relate to the requests of different lines to receive a greater proportion of the business than they are receiving and your answers thereto such as you have read?

A. I got a good many requests through our various connections for a larger percentage of business, and——

Q. Do your connections have agents out seeking a larger proportion of business after it passes your terminus, or do they seek
717 it by mail, or otherwise?

Mr. CALL: That is objected to as not cross examination, and I reserve the same objection to other questions along that line.

Mr. FLINT: Let it go into the record that that same objection seems to be made from time to time, and that I ask, isn't it understood that we have that right?

Mr. CALL: Well, I suppose so, but I want to make it clear.

Mr. FLINT: I want to be clear about it, because I have got the understanding that without making them we have every legal objection.

The SPECIAL EXAMINER: That was the very first part of the taking of the testimony.

By Mr. NORTON:

Q. Now, in the case that you have just stated, the connecting carrier started the request for a particular delivery at Cleveland—was it, or Cincinnati?

A. Cleveland.

Q. Following that, I notice that paragraph number 7 of this routing circular of 1901 and 1902, and of 1902 and 1903, states that when a shipper asks for some particular delivery and you are satisfied that it is necessary to the business that it be given, if the route is one authorized in this circular you may route as the shipper desires so far as the delivering line is concerned. I will ask whether you have, in following this paragraph 7, acceded to the wishes of shippers respecting the delivery of citrus fruit?

A. We have when we have been satisfied that it was all right.

718 Q. What do you mean by being "satisfied it was all right"?

A. That the line over which delivery is asked is not paying a rebate for the business.

Q. Have you satisfied yourself in each particular case as to whether the request for routing or delivery was made in good faith?

A. We did for the first two years, until we got pretty thoroughly acquainted with the conditions in the East, and now we are all

practically able to determine in a general way the requests that come up.

Q. Did you ever find any of those requests that you believe to have been made in bad faith and refused to grant them?

A. Well, I recall one instance where we didn't grant the delivery asked for.

Q. Have you any further correspondence or records showing your dealing with connecting carriers or with shippers respecting the routing or delivery of citrus fruit after leaving your rails?

A. Yes sir.

Q. I wish you would refer to it and tell me what each particular instance was, the circumstances of it?

A. A letter from Ruddock, Trench & Company.

Q. Of where?

A. Los Angeles. Under date, January 2nd, 1902, addressed to Mr. J. W. White, auditor Santa Fe railway, Los Angeles, California.

"Dear Sir: We have recently closed contract with the San Diego Fruit Company, formerly San Diego Land & Town Company,
719 for the exclusive handling of their shipments from San Diego, National City, and vicinity, and will market some of their shipments in Boston territory. In order to facilitate the movement of this business, we desire these particular shipments routed by your line in connection with the three I's and Canadian Pacific Dispatch from Detroit. We hope you will be able to favor us in this matter, and that it will not interfere with your arrangements for proper distribution of traffic with your connections, but that you will be able to favor us by giving the other lines their pro rata proportion of through shipments. Kindly advise us and oblige yours truly, Ruddock, Trench & Company, by W. O. Randolph."

Q. What was done about that?

A. The letter was handed to Mr. Vincent, our traveling freight agent, with this letter: "January 9, 1902, Mr. H. A. Vincent, T. F. A., city. Dear Sir: Referring to attached, I wish you would talk with Mr. Randolph, and, if possible, try to see why he wants these shipments routed Canadian Pacific Dispatch. We are not averse to giving him that routing, but would like to know something more definite than is contained in his letter. Return Mr. Randolph's letter with your reply. Yours very truly."

Q. Who wrote the letter? Whose letter is that you just read?

A. That was written from our office. I think I signed the letter; over my own signature. For Mr. Vincent comes back with a letter under date January 10th, 1902, addressed to Mr. W. G. Barnwell, A. G. F. A., city. Dear Sir: Your file B 3,250, 9th inst., routing citrus fruit via Boston, San Diego Fruit Company. I talked with
720 Mr. Randolph today, and he showed me a letter from Boston agent in which he said that all their shipments for Boston they request routing via Santa Fe and Canadian Pacific Dispatch at Detroit. He represented he thought they would get better service on their cars and they would come into the Pittsburgh depot, which

is practically B. & M. delivery, and urged Mr. Randolph to specially ask for that routing. This is the only reason he has for asking that routing. Yours truly, H. A. Vincent."

Q. What does that mean by, "practically B. & M."? Were you delivering by the B. & M. at Boston?

A. Well, at that time I think we were making some B. & A. deliveries and B. & M. deliveries.

Q. At Boston?

A. Yes sir.

Q. What was done about Mr. Vincent's recommendation?

A. The routing as asked for was given.

Q. Why did you make the inquiry that you did?

A. Because I wanted to know a little more about why the request was made than was contained in Mr. Randolph's letter.

Q. Why did you want to know about it and what did you want to know about it?

A. Well, I wanted to develop if Mr. Randolph would advance any reason that would be contrary to the object sought by the initial carriers doing the routing.

Q. You mean, in other words to find out whether there were any rebates behind the request?

A. Rebates, or irregularities. I mean things contrary to the published tariff.

721 Q. Have you any other letters or correspondence between officers of the Santa Fe companies or officers of connecting companies——

A. Yes sir.

Q. Wait a moment. —determining or showing the percentage or division of freight to be received by each connecting carrier, citrus fruit to be received by each connecting carrier, or regulating or affecting the routing of citrus fruit traffic over lines of railroad connecting with the Santa Fe's lines?

A. Well, I have a letter here requesting—originating with a connection, requesting delivery by their line for a certain consignee.

Q. I wish you would let us know what it is.

A. It is a letter written by Mr. F. J. Erfert, second assistant general freight agent Wisconsin Central Railway Company, Milwaukee, under date January 10, 1902, addressed to Mr. J. W. Tedford, A. G. F. A., A. T. & S. F. railway, Chicago, Illinois. "Dear Sir: Enclosed find autographic routing order signed by G. B. Ives for J. K. Pratt & Sons, A. Greggory and I. L. Lyons & Sons, all of Redlands, California, covering their shipments of oranges to Fond du Lac, Wisconsin. Will you kindly have these placed in the regular way and give us your assistance in securing the shipment via our line. Yours truly, F. J. Erfert." Mr. Tedford in pencil referred the letter to Mr. E. H. Davis. Mr. E. H. Davis, under date, January 14——

Q. Mr. Davis has charge of your citrus fruit shipments?

A. He had at that time. He had charge of the refrigerator line at that time.

722 Q. Yes.

A. Under date January 14, 1902, Mr. Davis wrote Mr. Edward Chambers, general freight agent, Los Angeles, as follows: "Please note next attached letter from Mr. F. J. Erfert A. G. F. A., Wisconsin Central railway, enclosing routing orders signed by G. B. Ives requesting all shipments consigned to him at Fond du Lac to be routed by the Wisconsin Central railway. If consistent, will you kindly arrange to comply with instructions, and route shipments consigned to him as requested."

Q. What was done with that?

A. To which reply was made from our office January 21, 1902: "Mr. E. H. Davis, manager S. F. R. L., Chicago. Dear Sir: Your letter 14th inst. inclosing one from A. G. F. A. Erfert of the Wisconsin Central to Mr. Tedford, requesting that shipments of citrus fruits from various firms in southern California to G. B. Ives, Fond du Lac, be routed Wisconsin Central. As you know, the routing and handling of the citrus crop from southern California is a very big proposition, and to take care of such individual requests makes it much more burdensome, and we have aimed, as far as possible, without doing injustice to the consignees, to keep away from these requests. We aim to take care of the various railroads in a general way, as we have done with the Wisconsin Central on Fond du Lac business. However, I will place these orders on file and observe them as closely as we can."

Q. Whose letter is that?

A. That was signed, I presume, with Mr. Chambers' name.

Q. That request originated with a connecting carrier ask-
723 ing for more business?

A. Enclosing a routing—no, not asking for more—well, really, it was asking for more business, but he enclosed a specific routing order from the consignee.

Q. The subject was broached by the connecting carrier?

A. Yes sir.

Q. Have you anything further?

A. Yes sir.

Q. First, let me ask you, by way of parenthesis, whether these letters that you are reading are the office files of your department?

A. Yes sir.

Q. Your records. And can you state that the letters received came in due course of mail from the persons purporting to send them?

A. I presume they did.

Q. And the answers that you are reading were returned by mail to the writers?

A. Yes sir.

Q. Now, if you have anything further, answering the request of the *svbpœna duces tecum*, as to your dealings with connecting carriers, or with consignees respecting routing, please produce and read it.

is practically B. & M. delivery, and urged Mr. Randolph to specially ask for that routing. This is the only reason he has for asking that routing. Yours truly, H. A. Vincent."

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A. Well, I have a letter here requesting—originating with a connection, requesting delivery by their line for a certain consignee.

Q. I wish you would let us know what it is.

A. It is a letter written by Mr. F. J. Erfert, second assistant general freight agent Wisconsin Central Railway Company, Milwaukee, under date January 10, 1902, addressed to Mr. J. W. Tedford, A. G. F. A., A. T. & S. F. railway, Chicago, Illinois. "Dear Sir: Enclosed find autographic routing order signed by G. B. Ives for J. K. Pratt & Sons, A. Greggory and I. L. Lyons & Sons, all of Redlands, California, covering their shipments of oranges to Fond du Lac, Wisconsin. Will you kindly have these placed in the regular way and give us your assistance in securing the shipment via our line. Yours truly, F. J. Erfert." Mr. Tedford in pencil referred the letter to Mr. E. H. Davis. Mr. E. H. Davis, under date, January 14——

Q. Mr. Davis has charge of your citrus fruit shipments?

A. He had at that time. He had charge of the refrigerator line at that time.

722 Q. Yes.

A. Under date January 14, 1902, Mr. Davis wrote Mr. Edward Chambers, general freight agent, Los Angeles, as follows: "Please note next attached letter from Mr. F. J. Erfert A. G. F. A., Wisconsin Central railway, enclosing routing orders signed by G. B. Ives requesting all shipments consigned to him at Fond du Lac to be routed by the Wisconsin Central railway. If consistent, will you kindly arrange to comply with instructions, and route shipments consigned to him as requested."

Q. What was done with that?

A. To which reply was made from our office January 21, 1902: "Mr. E. H. Davis, manager S. F. R. L., Chicago. Dear Sir: Your letter 14th inst. inclosing one from A. G. F. A. Erfert of the Wisconsin Central to Mr. Tedford, requesting that shipments of citrus fruits from various firms in southern California to G. B. Ives, Fond du Lac, be routed Wisconsin Central. As you know, the routing and handling of the citrus crop from southern California is a very big proposition, and to take care of such individual requests makes it much more burdensome, and we have aimed, as far as possible, without doing injustice to the consignees, to keep away from these requests. We aim to take care of the various railroads in a general way, as we have done with the Wisconsin Central on Fond du Lac business. However, I will place these orders on file and observe them as closely as we can."

Q. Whose letter is that?

A. That was signed, I presume, with Mr. Chambers' name.

Q. That request originated with a connecting carrier ask-
723 ing for more business?

A. Enclosing a routing—no, not asking for more—well, really, it was asking for more business, but he enclosed a specific routing order from the consignee.

Q. The subject was broached by the connecting carrier?

A. Yes sir.

Q. Have you anything further?

A. Yes sir.

Q. First, let me ask you, by way of parenthesis, whether these letters that you are reading are the office files of your department?

A. Yes sir.

Q. Your records. And can you state that the letters received came in due course of mail from the persons purporting to send them?

A. I presume they did.

Q. And the answers that you are reading were returned by mail to the writers?

A. Yes sir.

Q. Now, if you have anything further, answering the request of the *subpœna duces tecum*, as to your dealings with connecting carriers, or with consignees respecting routing, please produce and read it.

A. I have here a letter from Mr. R. H. Wilkinson, secretary Southern California Fruit Exchange, under date December 2nd, 1902 addressed to Mr. E. Chambers, G. F. A., S. C. railway city. "Dear Sir: Referring to our conversation over the phone with your Mr. Barnwell regarding delivery on car 1186 out from Corona on
724 the 30th to London, Ontario. In sending us this order, our agent requests that Michigan Central delivery be given, and would say regarding it that this delivery has been desired by this particular customer for the last two or three years and has been given to him on cars diverted into his market in almost every instance. As to any particular reasons why he should desire it, we don't know. We will take this matter up with a view to finding out. In the meantime would thank you to give us the delivery requested on this car."

Q. That is by the California Fruit Exchange?

A. Yes sir.

Q. What was done about this request?

A. I O. K.'d this particular delivery, and then wrote to Mr. Kendall, our general agent at Detroit, under date December 3rd, 1901: "By referring to routing circular season 1901–2, you will find that the routing for London, Ontario, is I. I. I. Wabash Canadian Pacific Dispatch. Shipper advises us that firm located in London, by name J. G. Steel & Company, request Michigan Central delivery. Will you please investigate and advise us as early as possible if it is important above firm should have this delivery. If, in your opinion, they should be favored, please advise why."

Q. Why was that request made?

A. I wanted to determine what prompted the request for that delivery, to ascertain whether such prompting was in any way contrary to the tariff that was published.

Q. Well, what do you mean by that?

A. Well, variance of rates by the delivering line, or irregularities in handling the shipment by the lines over which the routing was asked for.

725 Q. I will ask you to state whether you had any opinion as to the possibility of there being rebates from car lines or connecting carriers back of the request?

A. I can't say that I did, but we were making it a practice at that time to get acquainted with the conditions all through the country, and we questioned nearly all requests that came out. We didn't work any hardship——

Q. Well, the general questioning that you instituted was for the purpose of finding out whether there were irregularities, either as to rebates or otherwise?

A. Yes sir.

Q. In the requests of connecting carriers and of shippers also?

A. Yes sir.

Q. The consignees.

726 A. Yes sir. Mr. Kendall replied to my letter under date December 9, 1901, to Mr. Edward Chambers, G. F. A. Los Angeles: "I have your letter 3,256, of the 3rd instant, on the above subject. The only possible reason I can see for J. G. Steele & Company asking for Michigan Central delivery is that the Canadian Pacific at London is located further away, and if J. G. Steele & Company have no objection I think it would further their interest to have shipments routed I I I and Grand Trunk, the Grand Trunk depot being nearer the business center than the Michigan Central. This will make a direct line, and in the interest of prompt service would suggest that it be done."

Q. Who was that from?

A. That is from Mr. C. J. Kendall.

Q. And who was he?

A. Our general agent at Detroit, Michigan, in charge of what is known as our Michigan territory.

Q. What did you do?

A. I wrote Mr. Wilkinson again, secretary Southern California Fruit Exchange, under date December 17, 1901: "Your letter 2nd instant requesting Michigan Central delivery on car consigned to J. G. Steele & Company, London, Ontario. You were to find out from your representative in that territory why this delivery was necessary. Have you done so, and will you please advise." He makes reply under date December 18, 1901: "Mr. Edward Chambers, G. F. A., S. C. Ry., city. Dear Sir:—A short time ago the matter came up of deliveries by M. C. at London, Ontario, for a customer that we have in that market. We have a reply, through Mr. Moe, our agent at
727 Detroit, saying that he does not know of any particular reason for this. We would say that the agent at Detroit is a new one, having occupied that position for about six weeks only, and may not be as well acquainted with the conditions as he will be later on." On receipt of that letter I endorsed it over to the clerk who was handling the work of routing in my office, to this effect: "If this comes up again, give the routing mentioned by Kendall, which means Grand Trunk delivery." I find afterwards on here that I made another note to the same effect: "Until further advised, give the Michigan Central delivery." Attached to these papers is a card, a business card, G. G. Steele, wholesale fruit and produce, London, Ontario." In explanation of that second order, to give Michigan Central delivery, I will say that Mr. Steele called on me and explained why he wanted Michigan Central delivery. And I explained to him why I had given his shipments to the Grand Trunk delivery. He told me that he had an unsettled claim with the Grand Trunk and was unable to get any satisfaction out of it, and it would be an accom-odation to him to let his shipments go in over the Michigan Central until he got this claim matter settled. I very readily acceded to his request, and gave him a note of introduction to the Grand Trunk agent at Los Angeles; told him he was

a good fellow, and told him he could probably straighten up his differences with him.

Q. You use the same leverage over connecting carriers who do not make settlements as they should, or return cars promptly?

A. Yes sir.

728 Q. In the case of routing and diverting do you have occasion to exercise the same leverage that this consignee exercised in the case you have just noted to compel connecting carriers to make better deliveries or better time, or settle for losses or to return cars more promptly?

A. Yes sir.

Q. At the time this letter was written, the first that you have just read, did you have Michigan Central delivery at all at London, Ontario, shown on your distribution sheet?

A. I think not. I think the distribution sheet showed the Canadian Pacific Despatch delivery.

Q. I will state that the Michigan Central was not on the sheet at that time as shown by this exhibit. Have you any other official correspondence between your department and the departments of any other railroad companies or connecting carriers as called for in the *subpœna duces tecum* regulating or affecting the routing of citrus fruit traffic over connecting lines or fixing or determining the percentage or division of freight to be received by connecting lines?

A. You confine that question to our connections only, or do you extend it to shippers and consignees?

Q. To shippers and consignees both; all concerned in the shipment of citrus fruits.

A. Well, I have got quite a number of them here. I might run down through them all. I have here carbon copy of a letter written by the New England freight agent of the Canadian Pacific Despatch at Boston. No signature to the letter, consequently I

729 cannot give his name, unless that it was Mr. H. G. Leslie, whose name appears in print on the letter head.

Q. From what department does it come?

A. Office of general manager. Dated Boston, November 25, 1902. W. H. Blodgett & Company, Worcester, Massachusetts: "Gentlemen: I was very pleased indeed that we handled your carload of walnuts into Worcester on schedule time. I think I can consistently look now for your aid in handling your orange shipments from now on. I hope you will be kind enough to write to your Redlands house stating to them that you would like to have the Canadian Pacific Despatch favored east of Chicago, sending me notification to that effect in writing so that I may use it in my solicitation direct on the Santa Fe, they claiming, as in the past, to control the through routing, which I however believe they will concede to us on a request backed by your letter to our fourth vice-president in Montreal on their traffic manager. I shall be very pleased to hear from you. Yours truly, New England freight agent."

Q. To whom was that addressed, do you say?

A. W. H. Blodgett & Company, Worcester, Massachusetts. To which W. H. Blodgett & Company replied, under date November 29, 1902: "Mr. H. G. Leslie, N. E. freight agent, Canadian Pacific Despatch, No. 4 Liberty square, Boston, Mass. Dear Sir:—Yours of the 25th received. We have written our Redlands office to-day in reference to having our oranges routed by Canadian Pacific Despatch. We are certainly well pleased with the work which you did for us last season, and we hope you will do equally as
730 well this. Yours respectfully, W. H. Blodgett & Company."

Q. How did that get to you?

A. Mr. Leslie, Canadian Pacific Despatch New England freight agent, under date December 1st, 1902, addressed G. M. Bosworth, Esq., fourth vice-president, C. P. R., Montreal, P. Q. "Dear Sir:—Referring to the enclosed, perhaps you will think it advisable to drop Mr. W. B. Biddle, F. T. M. of the Santa Fe a line that W. H. Blodgett & Company, Worcester, Mass., prefer to have their shipments of California oranges routed in our care, and have so advised their Redlands office requesting them to so arrange if possible. A line from you now I think will fix this business for us for a surety. Yours truly, H. G. Leslie, New England freight agent."

Q. On what letter head was that?

A. That was on the letter head of the Canadian Pacific Despatch.

Q. What was done? Did Mr. Biddle ever hear from it?

A. Yes sir, Mr. Bosworth writes to Mr. Bissell, our assistant freight traffic manager at San Francisco.

Q. Who was the Mr. Biddle mentioned there?

A. Mr. Biddle is the freight traffic manager at Chicago.

Q. Of the Santa Fe lines?

A. Yes sir. Mr. Bissell is the assistant traffic manager of the Santa Fe lines at San Francisco. Mr. Bosworth had written Mr. Bissell under date December 4th, 1902: "Kindly note the enclosed correspondence sent me by Mr. Leslie. I know that you will do what you can for us. Yours very truly, G. M Bosworth, fourth vice-president."

Q. Fourth vice-president of what?

731 A. Of the Canadian Pacific. Mr. Bissell replies to Mr. Bosworth, under date December 28, 1902: "G. M. Bosworth, fourth vice-president Canadian Pacific Railway Company, Montreal, P. Q. Dear Sir:—This will acknowledge receipt of your letters of the 4th and 16th of December on the subject of citrus fruit shipments via your line. I am to-day forwarding all of the letters which accompanied yours above-mentioned to our Mr. Edward Chambers, general freight agent at Los Angeles, who has full charge of the routing of citrus fruit shipments. I think it most likely that Mr. Chambers will be able to assist you in the matter and that you will hear from him direct." I wrote Mr. Bosworth over Mr. Chambers' signature under date January 6th: "Mr. G. M. Bosworth, fourth vice-president C. P. R., Montreal, P. Q. Dear Sir:—Your letter of December 4th to Mr. Bissell with enclosures relative to routing

citrus fruits via your line. We arrange our routing line at the beginning of the season and aim to give the various lines a fair share of the season's distribution, and I feel confident that the C. P. R. will be highly satisfied with what we have endeavored to do for them on these shipments off our rails this season. It is difficult for us to pick out individual shipments. We aim, however, not to work a hardship on the consignees by giving them a delivery that is hard for them. In such cases we are perfectly willing to try and give them a delivery that the conditions justify, and in his case if you still wish it we will endeavor to see that it travels by your rails."

Q. By whom was that signed? Mr. Chambers?

A. That was undoubtedly signed by Mr. Chambers,—or,
732 not signed by Mr. Chambers, but Mr. Chambers' signature was signed to the letter.

Q. Signed officially?

A. Yes, sir.

Q. Since the reservation of the right to route by the defendant companies, have you ever made any different arrangement with any connecting carrier than the one that you have just read, or had any transactions different from those just related, with the companies mentioned, respecting distribution of business to the lines of connecting carriers?

A. No sir.

Q. Or the divisions of the orange or citrus fruit rates among them?

A. No sir.

Q. Have you any other correspondence as called for by the *subpœna duces tecum* regulating or affecting the routing of citrus fruit traffic over lines of railroad connecting with the lines of the Santa Fe or the defendant companies, or showing the determination of the percentage or division of freight to be received by connecting lines receiving citrus fruit?

A. Yes, sir.

Q. I will ask you to state it and read it.

A. A letter from A. H. Naftzger.

Q. Who is he?

A. Mr. Naftzger is president and general manager of the Southern California Fruit Exchange, Los Angeles. Letter dated March 17, 1903: "E. Chambers, G. F. A., Southern California railway,
733 city. Dear Sir:—Our Milwaukee agent has requested that half of his shipments be routed by C. & N. W., as nearly all of his customers in towns north of his point have their warehouses on these tracks and he sells to some points only reached by this road. Kindly, therefore, change our preferred delivery sheet to read C. M. & St. P. or C. & N. W. for Milwaukee. Please advise how we will route the C. & N. W. shipments so we can direct them from Milwaukee east on the through rate. Yours truly, A. H. Naftzger."

Q. What is meant by "our preferred delivery sheet," that he speaks of?

A. Well, at the beginning of the season the Southern California Fruit Exchange has been in the habit of filing with us a list of destinations showing the preferred deliveries at those destinations and the reasons for them.

Q. By way of parenthesis, what part of the southern California citrus business is handled by this exchange, or was handled at that time?

A. I think the Southern California Fruit Exchange itself handled—well, my information is not specific on it, but I think I remember hearing Mr. Naftzger testify in the original case that it was between forty and fifty per cent.

Q. Well, I just want it thrown in parenthetically here—I think it is in the record several times—so that we may know. Now, you said that the Southern California Fruit Exchange gave you as a preliminary to each shipping season's business a preferred delivery list?

A. Yes sir.

Q. Didn't other shippers do likewise?

A. No, they made their requests principally verbally on
734 our agents or at our office.

Q. Now, this preferred delivery sheet of the Southern California Fruit Exchange, was it followed by you?

A. Yes sir.

Q. You made the deliveries requested?

A. Yes sir.

Q. This letter you have read calls for changes with respect to some delivery?

A. Yes sir.

Q. I wish you would go on and show what was done about the request.

A. I wrote Mr. Naftzger, over Mr. Chambers' signature, under date of March 18th, 1903: "Mr. A. H. Naftzger, president and general manager, Southern California Fruit Exchange, Los Angeles. Dear Sir:—Your letter of the 17th instant, relative to routing by C. & N. W. into Milwaukee, diverting from there and protecting the through rate. Our only route into Milwaukee by the C. & N. W. is through the Chicago gateway. We would be unable to protect the through rate out of Milwaukee to points East when routed that way on account of the back haul. We can give you C. & N. W. delivery at Milwaukee on cars that are actually delivered at that point, but on cars diverted out of there would have to take a local in addition to the through rate. Yours truly."

Q. What do you mean by a "back haul" there?

A. Well, it would be the haul from Milwaukee back to Chicago.

Q. Well, over what line?

A. Over the same line that it goes in there on.

735 Q. What line?

A. Well, the C. & N. W., for instance.

Q. Well, you mean the C. & N. W. in hauling back from Milwaukee to Chicago would charge a local rate?

A. They would charge a local rate, yes sir.

Q. For the reason that they might have got it at Chicago in the first place?

A. Well, for the reason that the one dollar and twenty-five cent rate applies through Chicago to Milwaukee. They get a proportion out of that rate. The percentage sheet will show what they are entitled to. Now, if they were to perform the haul from Milwaukee back to Chicago and we would protect that dollar and twenty-five cent rate through to destination, it would mean that the lines protecting that through rate to destination would have to absorb not only the C. & N. W.'s proportion of the rate as it applies to Milwaukee but also the local that they would charge from Milwaukee back to Chicago.

Q. Well, it means that the C. & N. W. would get nothing for the haul?

A. No, they would get it, but the lines would have to absorb it, which is irregular.

Q. What further about that?

A. Mr. Naftzger replies under the date March 19, 1903: "Mr. E. Chambers, G. F. A., Southern California Railway Company, city. Dear Sir:—Referring to your letter of the 18th, B 3256, I have to say that it was our understanding that shipments via your road and the Northwestern for Milwaukee would be taken by the North-
736 western at Joliet, and that exactly the same rules would apply with reference to re-consignment as applies to shipments reaching Milwaukee by the C. M. & St. P. Acting on this understanding, we made the request for part of our shipments to go via C. & N. W. If we are mistaken about this, as I assume, we are, since you state, 'Our only route into Milwaukee by the C. & N. W. is through the Chicago gateway. We would be unable to protect the through rate out of Milwaukee to points east when routed that way on account of the back haul. We can give you C. & N. W. delivery at Milwaukee on cars that are actually delivered at that point, but on cars out of there we would have to take a local in addition to the through rate,' we can only ask that you cancel the request, as we dare not permit the shipments to go into Milwaukee unless there is a possibility of reconsigning at the through rate."

Q. Have you any other official correspondence along the line that you have been following?

A. Yes sir. Here is a letter from A. Gregory, dealer in oranges, lemons, dried fruit, raisins, honey and so forth, at Redlands, California: "March 27, 1902. Mr. W. G. Barnwell, Los Angeles, California. Dear Sir: We are advised by our agent at Glendora that car A T & S F 2663, shipped on the 26th, is routed by your agent at that point, Santa Fe, Missouri Pacific to Carthage, Missouri, the agent declining to give Frisco delivery. We have urgent requests from the consignees to have their cars delivered Frisco, and as far as we can

judge the Missouri Pacific having no direct line from the West in Carthage, Missouri, that it is the intention of the Santa Fe to
737 haul the car to Kansas City, thence via the Missouri Pacific south. We desire to call your attention to the fact that car was requested to be loaded S. P. via the T. & P. Frisco, and one of the reasons why we loaded this Santa Fe was to obtain quicker service. But this will be lost if car is not sent direct from the West, same via Wichita, care of the Frisco at that point. We certainly would have been under compulsion to have taken the matter up with the consignee as to the advisability of loading Santa Fe had we known that this delivery would not have been conformed with by your company. We therefore urgently request that this car be turned over to the Frisco line at Wichita. This will be most satisfactory to all concerned, we presume. We know that you will give this matter your prompt attention and accede to the request if possible to be done. Yours truly, A. Gregory."

Q. What did you do?

A. I replied to Mr. Gregory under date March 29, 1902: "Your letter March 27th requesting that routing on A T 2663, shipped from Glendora on the 26th to Carthage, Missouri via Missouri Pacific at Kansas City, be changed to Frisco line at Wichita. This is to advise that instructions have been issued that routing on car in question be changed so that car will receive Frisco delivery, car being delivered to that line at Burrton, Kansas. Yours truly."

Q. By delivering the car to the Frisco at Burrton, Kansas, instead of hauling it over your own rails to Kansas City and delivering it there to the Frisco, how much of a haul, if any, did you lose?

A. About 200 miles. I think it is 205 miles.

738 Q. Paragraph four of the circular letter No. 41 E, Exhibit 13, and the preceding circular marked Exhibit 12, requires that shipments will be forwarded by the most direct route, having in view the long haul for the Santa Fe system?

A. Yes, sir.

Q. Then we are to understand from this example that the rule is to be followed only so far as practicable and serviceable to the shippers as well as the railway company?

A. Yes sir. We aim not to work a hardship on the shippers, on the consignee.

Q. Do you make other deliveries, and have you made them since the time of the reservation of the right to route, cutting out or reducing Santa Fe mileage, as you did in this case, aside from the Texas example that you mentioned at the beginning of your testimony?

A. Yes. We could haul Omaha business, for instance, to Kansas City. We gave it up at Pueblo.

Q. Gave it to what connecting carrier?

A. Well, we gave it, I think, to the Burlington at Pueblo, because it was a more direct route of reaching them.

Q. Well, were there any requests by consignees or shippers at intermediate points between Pueblo and Omaha?

A. I don't know of any by the consignees, but I think that we had some from the shippers, yes sir.

Q. And you abandoned the shipments at Pueblo instead of bringing them to Kansas City?

A. Yes, we have done that.

Q. Well, as a matter of fact, the Omaha business goes that way mostly?

739 A. Well, I think it does; I think that is routed so. I think it is all shown in there.

Q. Have you any further official correspondence with other railroad companies, connecting carriers or with shippers?

A. Yes. Here is a letter from Anthony Schaub, 619 Liberty street, Pittsburg, Pennsylvania, under date February 21, 1903, addressed to Sparr Fruit Company, Los Angeles: "Dear Sirs:—Have all cars routed over P. R. R. We have trouble when it comes any other way. Have had to haul three cars from B. & O. this week to the auction house. The car of lemons from San Diego on the 6th is in on the B. & O., but haven't been able to see it, as they will not get it in position for us before five o'clock tonight. They bring these cars over the B. & O. and give them to the junction road, which transfers them near the P. R. R. This car may have been in Pittsburg two days before we knew it. The auction house is on the P. R. R. platform. Car 18079 we unloaded to-day, and instead of there being in it 279 boxes of Ballets there are only 52, and are 279 boxes of Del Oros. Yours truly, Anthony Schaub."

Q. To whom was that addressed?

A. Sparr Fruit Company. The Sparr Fruit Company addressed Mr. E. Chambers, G. F. A., city, under date February 26, 1903——

Q. Sending the letter of Schaub with it?

A. Yes sir. "Please note the attached letter from Anthony Schaub, Pittsburg. Failure to get the Pennsylvania delivery is causing and has caused Mr. Schaub a great deal of inconvenience

740 and expense, and if it is consistent we would be glad if you would kindly arrange it so that there will be no trouble about the proper delivery in the future. Please advise if you will give instructions to your routing clerk to have the cars billed or diverted to Anthony Schaub go in over the Pennsylvania lines. Trusting that you will kindly comply with our wishes in this matter, and thanking you in advance for a prompt reply, we are, yours truly, Sparr Fruit Company." I made reply under date March 3rd, 1903: "Sparr Fruit Company, Los Angeles. Dear Sirs:—Your letter of 26th ultimo enclosing one from Anthony Schaub at Pittsburg, asking that all cars citrus fruit consigned to them be given P. R. R. delivery, would say that if you will request our agent at that delivery for these cars at the time you offer the shipment, we will be glad to arrange for it. Yours truly."

Q. Have you any other official correspondence called for by the *subpœna duces tecum?*

A. Yes sir. Here is a letter from E. P. Stacey & Sons, general commission merchants, Minneapolis, Minnesota, under date February 21, 1903: "To Frank L. Palmer, North Pomona, California. Dear Sir:—We notice that the first car of oranges that you have shipped us is routed via Chicago and Great Western railway. Now, their depot is very inconvenient for us, and we have never been able to get any good railway service from them, and wish that you would never route any more shipments via this line. Please see that all cars are routed care of C. M. & St. P. railway. Yours respectfully,

E. P. Stacey & Sons by C. L. Stacey, secretary." Our agent at
741 North Pomona, under date March 6th, 1903, addressed Mr. E. Chambers, G. F. A., Los Angeles: "Dear Sir: Please note attached from E. P. Stacey & Sons, Minneapolis, Minnesota, to F. L. Palmer, objecting to C. G. W. delivery on oranges on account of the distance of that depot from their place of business. Shall I give them C. M. & St. P. from Kansas City? I think I can even up the percentages to a great extent by routing the exchange cars for Minneapolis via C. G. W. With return of Mr. Palmer's letter, please say if O. K. Yours truly, E. H. Welch." To which I reply, under date March 7, 1903: "Mr. E. H. Welch, agent, North Pomona. Dear Sir: Your letter 6th instant relative to giving citrus fruit shipments consigned to E. P. Stacey & Company the C. M. & St. P. instead of C. G. W. There will be no objection to this, therefore you will route Palmer's shipments of citrus fruit via the Milwaukee from Kansas City."

Q. The routing was done as requested?

A. Yes sir.

Q. Any further official correspondence?

A. Yes sir. I have here a letter from William Weinert & Company, commission merchants and dealers in fruit and produce, Philadelphia, under date December 13, 1902: "Mr. W. A. Bissell, assistant traffic manager, A. T. & S. F., San Francisco, California, Dear Sir:—We have just received several bills of lading covering oranges consigned to us from Pacific coast, one showing routing by Pennsylvania railroad, the others via Baltimore & Ohio railroad, from which it would appear there is a possibility of our cars arriving over different lines. If there should be an irregularity of service it will completely upset our arrangements in the matter of deliveries.

742 The B. & O. people here have handled our shipments for several years, are fully familiar with our methods, and they give us the best service. I would therefore respectfully request that you instruct your people to route all of our Philadelphia cars care B. & O. R. R. Company for B. & O. pier No. 12, north delivery. If you have any cars now in transit routed care of any other line, kindly arrange diversion to the B. & O. This request is made from a standpoint of self-protection, and we sincerely hope same will be granted. Thanking you in advance for favorable action, and an

early reply, we remain yours truly, William Weinert & Company.' Mr. Bissell, under date December 22, 1902, writes Messrs. William Weinert & Company, Front and Vine streets, Philadelphia: "Gentlemen: This will acknowledge receipt of your letter of December 13 on the subject of routing your shipments via the B. & O. I have referred same to Mr. Edward Chambers, our general freight agent Los Angeles, who has full charge of the routing of this business via our line, and I have no doubt but that Mr. Chambers will be able to arrange matters to your satisfaction. He will communicate with you direct regarding the same. Yours truly, W. Bissell."

Q. What did Mr. Chambers do about it?

A. He wrote Mr. Bardell, general agent, under date January 12 1903: "Dear Sir: Referring to the attached, you will appreciate what a task it is to attempt to observe these individual requests However, we don't wish to work a hardship upon any consignee. What are your recommendations and why is it necessary for Weinert & Company to have B. & O. delivery?" I say Mr. Chambers
743 wrote that letter: I wrote that letter; written over my signature.

Q. You were the assistant general freight agent?

A. Yes sir.

Q. Assisting Mr. Chambers?

A. Yes sir.

Q. Of the Santa Fe lines at Los Angeles?

A. Yes sir. Mr. Bardell replies under date January 29, 1903: "W. G. Barnwell, assistant general freight agent, Los Angeles, California. Dear Sir: Your letter of January 12th, B. 3256, came duly to hand. Weinert & Company, Philadelphia, are just a short distance from the B. & O. terminals there. Furthermore, they are very friendly with the agent of the B. & O. I told them yesterday to request of their shippers B. & O. delivery and we would come as near as possible to complying with their wishes and shipments via the Santa Fe at very much nearer the B. & O. terminals in Philadelphia than they are to the Pennsylvania. Consequently they desire B. & O. delivery. Yours truly, J. S. Bardell."

Q. Can you say whether you gave the delivery?

A. Yes sir, it was given.

Q. In writing Mr. Bardell and asking why it was necessary for Weinert & Company to have B. & O. delivery, what had you in mind?

A. I wanted to develop whether there were any irregularities or not.

Q. Now, the distributions—is that what you call it? Distribution circular?

A. Yes, the routing circular.

Q. Routing circular, shows of Philadelphia business, fifty
744 per cent. to Pennsylvania, on which one of Weinert's cars went, and twenty-five per cent. to the B. & O., on which the other car went at the time you wrote, and twenty-five per cent. to

the St. L. V. & T. Is that it? Why was the distribution made in that way? Can you tell? Fifty per cent. to the Pennsylvania and only twenty-five per cent. to the road over which he asked special delivery.

A. As a general thing the deliveries in Philadelphia are asked by shippers to be given to the Pennsylvania line. They are considered more favorable. Another thing, we permitted that distribution is this:—

Q. By way of parenthesis, what does the Naftzger sheet—what do you call that? The Naftzger preferred delivery sheet—show about that.

A. Is this Philadelphia we are talking about?

Q. Yes.

A. He asked for B. & O. delivery. We also aim to equalize the amount of freight that we give to those various direct lines. We may increase the percentage at one town and decrease it at another, so as to make a fair distribution.

Q. Well, the point I want to get at is whether the Pennsylvania makes contact, so to speak, with a better class of cities—I am asking this more for my own information—than the B. & O.

A. I think, without looking the thing up, that they do reach more towns that take citrus fruit throughout the territory traversed than does the B. & O.

Q. Well, the Pennsylvania is better capable of doing business than the B. & O.? It does a larger business? Has more
745 facilities? Or not? Do you know?

A. Well, I don't believe that I am competent to say that. I have always understood that the Pennsylvania is a pretty big system and has very fine facilities everywhere.

By Mr. CALL:

Q. They are both under the same system now, aren't they?

A. That I can't answer, Mr. Call.

By Mr. NORTON:

Q. Have you any further official correspondence with connecting carriers or with shippers.

The EXAMINER: Before you start on that Mr. Norton, how long do you think you will take with this witness yet?

Mr. NORTON: Probably half an hour.

The EXAMINER: I think we had better take an adjournment now.

Adjourned until two o'clock p. m.

746 OCTOBER 29, 1903—2 o'clock p. m.

W. G. BARNWELL.

Cross-examination resumed.

By Mr. NORTON:

Q. Mr. Barnwell, have you any other official correspondence b tween the Santa Fe lines or companies and the connecting carrie or shippers, as requested by paragraphs four and five of the *subpœ duces tecum*, affecting the routing of citrus fruit traffic over the lin of railroad connecting with the Santa Fe lines, or determining showing the percentage or division of freight to be received by eac connecting line upon citrus fruits from southern California to poin east of the Missouri river?

A. Yes sir.

Q. Will you produce it and read it?

A. Here is a letter from the Boston and South Riverside Fru Company, per J. Fred Howarth, dated Boston, November 20, 190 to Mr. H. G. Leslie, New England freight agent of Canadian Pacifi railway: "Dear Sir: We are just commencing our season of Cal fornia citrus fruits, and you having given us personal attention an care to the shipments we were fortunate enough in getting Mr. Bi sell of the Santa Fe to run your way east of Chicago, it appeals to u you are deserving of our co-operation this season. We expect t handle a very considerable business from Corona, California, locate locally on the Southern California railway, and in fact the busines has already started, one car S. F. R. L. 1667 having been shippe

747 November 18th, the bill of lading calling for Santa Fe, I. & I., G. T. National Dispatch, Fitchburg delivery. We wil be glad to have you take the matter up through the prope channels of controlling not only this shipment but our future bus ness to move in due course from Corona or any other cars that ma come consigned to any other parties, J. F. Howarth. We will b glad to hear from you the results effected by you through this com munication. We will of course look to you to have us specially ad vised of the passing dates by wire, etc. etc., as effected by you on ou account last year. I have no doubt should this letter be referred t Mr. Bissell he will remember the very pleasant chat I had with hin en route to California regarding this and other incidental matters Yours truly, Boston & South Riverside Fruit Company, J. Fre Howarth."

Q. To whom is that addressed?

A. That is addressed to Mr. Leslie of the New England Freigh Agency of the Canadian Pacific railway at Boston.

748 Q. What was done about it?

A. Here is a carbon copy of a telegram sent by Mr. Leslie under date November 20, 1901, to W. A. Kittermaster, 234 La Salle street, Chicago, Illinois. "S. F. R. L. 1667, Corona, No-

vember 13, lemons, consignee J. Fred Howarth asks us arrange through Santa Fe to divert to us via Kankakee. Hope you may successfully act. H. G. Leslie." Mr. Bosworth, freight traffic manager, Canadian Pacific railway at Montreal, under date 21 November, 1901, writes to M. N. Stearn, Esq., division freight agent, Palace Hotel building, San Francisco." I will state that Mr. Stearn is division freight agent of the Canadian Pacific at San Francisco. "Please note the enclosed communication from Mr. Leslie. I suggest you see Mr. Bissell, give him my compliments, and show him the letter from Mr. Howarth addressed to Mr. Leslie, which I trust will have the required effect. Yours truly, F. M. Bosworth, freight traffic manager." There is a note on this letter of Mr. Bosworth to Mr. Stearn, "See Chambers, December 4, W. A. B." That means that Mr. Stearn brought this communication to Mr. Bosworth, Mr. Chambers being in San Francisco, and Mr. Boswell made that notation to draw his attention to the matter when Mr. Chambers came in.

Q. That is, Mr. Chambers, your superior, and general freight agent of the Santa Fe?

A. Yes sir, general freight agent of the Santa Fe west of Albuquerque. Mr. Chambers wires from Fresno, under date December 18: "W. G. B., Los Angeles. Send shipments Boston and South Riverside Company to Boston via Canadian Pacific." I wired to Mr. Chambers under date December 18, 1901: "E. Chambers, San Francisco. All Boston and South Riverside shipments to Boston
749 have been and are going Canadian Pacific. Signed W. G. Barnwell." And I have a letter, written to Mr. Boswell at San Francisco, evidently by Mr. Chambers from Los Angeles, dated 31st December, 1901: "W. A. Bissell, assistant traffic manager, San Francisco, California. Dear Sir: Returning correspondence from Mr. ——" he has got it Bostwick here, but it is an error. It should be Bosworth. "of Canadian Pacific railway, regarding shipments of Boston and South Riverside Orange Company, it is arranged to send all of the shipments for Boston via Canadian Pacific. Our agent at Corona has instructions to this effect. Yours truly." I find here a letter from Mr. Biddle, who is the freight traffic manager for the Santa Fe at Chicago, addressed to Mr. Chambers——

Q. That is Mr. Chambers' superior?

A. That is Mr. Chambers' superior, in the freight traffic department, yes, sir: "Chicago, Illinois, February 5, 1903. Mr. E. Chambers, G. F. A., Los Angeles, Cal., Dear Sir: In recent correspondence with these people"—with these people, and he refers to the subject matter of the letter above, which makes reference to the Boston and South Riverside Fruit Company.

Q. You have a subject reference on the letter head?

A. Yes sir.

Q. What is the reference?

A. "Orange shipments for Boston and South Riverside Fruit Company, Boston, Massachusetts." The body of the letter reads as follows: "In recent correspondence with these people, it develops

that they have a preference for the Canadian Pacific Dispatch east of here. They handle considerable orange business for Boston,
750 and some of it, I understand, has been routed National Dispatch. These two fast freight lines make practically the same delivery in Boston, but the consignees for some reason or other want Canadian Pacific Dispatch favored." And I have here an answer to Mr. Biddle from Los Angeles: "February 13, 1903. Mr. W. B. Biddle, F. T. M., Chicago, Illinois. Dear Sir: Yours of 5th instant, file M. 166–191, orange shipments for Boston and South Riverside Fruit Company, Boston, Massachusetts. Instructions have been out to our agent to Corona ever since December 31, 1901, to send all of the Boston and South Riverside Fruit Company's business via Canadian Pacific, and I am today renewing the instructions so that the matter cannot be overlooked. Yours truly." I presume that was signed "Edward Chambers."

Q. Was it from your department?

A. Yes sir.

Q. Have you any other files of official correspondence on the two subjects mentioned?

A. Yes sir. A letter from the Kalamazoo Cold Storage Company, Kalamazoo, Michigan, September 11, 1903. H. C. Potter, G. F. A., Kalamazoo, Michigan, Dear Sir.

Q. G. F. A. of what? Do you know?

A. Well, now, I will have to see. G. F. A., evidently of the Chicago, Kalamazoo & Saginaw Railway Company. "Dear Sir: It will not be long before we are moving to some extent California fruits in car lots. We shall instruct all our shippers to route our cars in care of your road at Pavilion, Michigan, and shall insist upon all our cars arriving via your road, as our warehouse is located on your road and when our cars arrive by any other road it causes delays and trouble in getting them switched and placed. The delay
751 often causes losses, especially when fruits are ripe. We are writing you at this time in order to give you time to take up this matter with your connections. When our shipments start to move we shall advise you promptly and fully as to the shipper and number and when each car starts, etc. Yours truly, Kalamazoo Cold Storage Company, per J. B. Balch, president."

Q. What routing do they ask for, or delivery?

A. They want their shipments delivered to the Chicago, Kalamazoo & Saginaw Railway Company at Pavilion, Michigan.

Q. 'm—i'm.

A. Mr. Potter, who I notice signs himself T. M., which means traffic manager, instead of G. F. A., writes under date Kalamazoo, Michigan, September 12, 1903: "Mr. C. J. Kendall, general agent Santa Fe, Detroit, Michigan. Dear Sir: The enclosed letter from the Kalamazoo Cold Storage Company explains itself. Will you kindly take the matter up with your people and make an effort to have the business routed as requested, viz: Grand Trunk and C. K. & S. via Pavilion, obliging, yours truly, H. C. Potter, T. M." Mr.

endall, our general agent at Detroit, writes, under date September
7th, 1903, to Mr. Edward Chambers, G. F. A., Los Angeles, Cali-
rnia: "Dear Sir: Beg to hand you herewith letter from H. C.
otter, G. F. A. of the C. K. & S. railway, and enclosing request
om the Kalamazoo Cold Storage Company for routing of citrus
uits for the coming season beyond the Santa Fe, care of the Grand
runk and C. K. & S. via Pavilion. Pavilion is the junction point of
ie Grand Trunk and C. K. & S. Similar routings were filed last year,
hich you received and notified me would be strictly complied with.
In spite of this, a number of diversions occurred which you
52 stated was through the carelessness of somebody who had
these routings in charge, and I will be glad to have you see
iat this season's business is given close attention so consignee will
ave no cause for complaint whatever. Yours truly, C. J. Kendall."
'o which reply was made from our department: "Los Angeles,
alifornia, 23rd September, 1903. Mr. C. J. Kendall, commercial
gent, Detroit, Michigan. Dear Sir: Your letter 17th instant, en-
losing letter from H. C. Potter of the C. K. & S. railway, also re-
uest from the Kalamazoo Cold Storage Company that their ship-
ients of citrus fruits be routed care of the C. K. & S. via Pavilion
is coming season. I shall be glad to comply with this request,
nd I will put it in such shape before those who are looking after
ie routing and diversions that I hope that we will have the cars
onsigned to Kalamazoo Cold Storage Company routed this season
s they request. Yours truly." I make a memorandum on Septem-
er 23, to the clerk in charge of the routing, "Please keep this be-
re you and see that all shipments of citrus fruits for the Kalama-
o Cold Storage Company are routed as Mr. Kendall requests, via
ie Grand Trunk, care C. K. & S. railway at Pavilion. W. G. B."
Q. That is yourself?
A. Yes sir.
Q. Now, at the time that request was made, did the routing cir-
ilar provide for delivery as desired?
A. No sir, it did not.
Q. And you gave the delivery requested, notwithstanding? You
ave the routing and delivery requested, notwithstanding?
A. Yes sir.
Q. Have you any further files of correspondence?
53 A. Yes sir.
Q. Official correspondence?
A. I have a letter here from the general freight agent, Kansas
ity Southern Railway Company, Kansas City, Missouri, September
4, 1903: "Mr. Edward Chambers G. F. A. Santa Fe Coast lines,
os Angeles, California, Dear Sir: There are several wholesale fruit
nd commisston firms at Fort Smith who handle citrus fruits exten-
vely. As the routing of this traffic is controlled by the initial
lines, we would like very much to be favored with a portion
54 of the Fort Smith traffic via Kansas. Will it be consistent
for us to expect this? Yours truly, city, E. E. Smythe,
. F. A."

Q. Of what company was that?

A. That is the Kansas City Southern Railway Company. To which we made reply under date September 18, 1903: "Mr. E. E. Smythe, G. F. A., K. C. S. Ry., Kansas City, Missouri. Dear Sir: Yours of the 14th instant. 11,932–C. We anticipate a very heavy citrus fruit season, about 30,000 cars, and will undertake to see that you get your share of the business."

Q. Did you, as a matter of fact, comply with the request in that letter?

A. I am inclined—yes, I think that we have given the Kansas City Southern some business. I can't now say how much we have given them.

Q. At the time this request was made by the Kansas City Southern Railway Company, did your routing circular provide for the routing and delivery of citrus fruit as requested?

A. No sir, it did not.

Q. And did you give the routing and delivery, notwithstanding?

A. I think we did.

Q. Have you any other official correspondence?

By Mr. CALL:

Q. You say that under that routing circular that no part of the business was to go over that road at the time that circular was issued?

A. At the time the circular was issued we had not provided any for the Kansas City & Southern or whatever road it is.

By Mr. NORTON:

Q. Kansas City Southern railway.

755 A. Kansas City Southern railway, but when it was brought to our attention, we did.

By Mr. NORTON:

Q. Have you any other official correspondence on these two points?

A. Yes sir. Here is a letter from Mr. C. J. Shepherd, fruit packer and shipper and general produce dealer, Los Angeles, February 12, 1903. "Mr. E. C. Chambers, general freight agent, Southern California railway, Los Angeles, California. Dear Sir: Messrs. P. Ruhlman & Company, New York, have requested Erie delivery upon their cars and I am writing them to-day that I thought there would not be any trouble in having this terminal delivery made in the future. The S. P. promises us this delivery. Yours truly, C. J. Shepherd." To which reply was made, February 17, 1903: "Mr. C. J. Shepherd, P. O. box 543, Los Angeles. Dear Sir: Your letter of the 13th instant relative to P. Ruhlman & Company's request for Erie delivery on their cars of citrus fruit at New York. We have been giving this firm Erie delivery for some time, if I mistake not. However, there is no reason why we should not give them the delivery they ask for."

Q. From what point is that?

A. Well, these shipments would be from southern California. This letter is from Los Angeles, the office of Mr. Shepherd. Shipments destined to New York.

Q. That was Erie out of Chicago? Is that what he asks for?

A. No, he asks for delivery, Erie delivery. On date February 17, I made notation to the clerk in charge: "Please see that
756 Ruhlman & Company are given Erie delivery at New York on their citrus fruit shipments."

Q. Have you any further correspondence?

A. Yes sir. I have a letter from A. H. Naftzger, who is president and general manager of the Southern California Fruit Exchange, written at Los Angeles, under date November 21, 1901, reading as follows: "Mr. Edward Chambers, G. F. A., Santa Fe Pacific railway, city. Dear Sir: Herewith we hand you list of deliveries which we desire made on our shipments at the various cities. You will note that there are several changes from the sheet of last year. These are due to the changes in our agencies and by reason of our experience as to the facility of handling. We will within a few days submit some special reasons for some of the changes we have made, and have no objection to covering any of the points that you may desire to inquire about. Very truly, A. H. Naftzger." That list read as follows: "List of preferred deliveries: Austin, Texas, I. G. N.; Atlanta, Georgia, Southern railway via Memphis; Baltimore, Maryland, B. & O.; Boston, Massachusetts, Fitchburg; Buffalo, New York, Wabash, L. S. & M. S.; Chattanooga, Tennessee, Southern railway; Chicago, Illinois, S. P. shipments, C. M. & St. P.; Cleveland, Ohio,"—I will make, in explanation of that, the statement that undoubtedly Mr. Naftzger gave a similar request to the Southern Pacific, and when any shipments went via our line via the Southern Pacific, he wanted it specified that he wanted C. M. & St. P. on those.

Q. Well, that would be immaterial.

A. "Cleveland, Ohio, Nickel Plate; Cincinnati, Ohio, Pennsylvania; Columbus, Ohio, El Paso shipments, B. & O. S. W.;
757 Ogden or Santa *Santa* Fe, Big Four; Des Moines, Iowa, Rock Island; Detroit, Michigan, G. T., or M. C., Galesburg, Illinois, C. B. & Q. only. Grand Island, Nebraska, B. & M.; Indianapolis, Indiana, Big Four, Vandalia; Jackson, Michigan, Michigan Central; La Salle, Illinois, C. B. & Q. only; Lincoln, Nebraska, B. & M. Ry. C. R. I. & P.; Louisville, Kentucky, S. P. shipments, B. & O. S. W., Santa Fe shipments, Big Four; Milwaukee, Wisconsin, C. M. & St. P., from Kansas City or Omaha; Minneapolis, Minnesota, C. M. & St. P.; Montreal, Q. G. T., New York, N. Y., Erie; Omaha, Nebraska, U. P., C. R. I. & P., B. & M.; Peoria, Illinois, C. B. & Q. only; Philadelphia, Pennsylvania, B. & O.; Pittsburg, Pennsylvania, Pennsylvania; Scranton, Pennsylvania, D. L. & W.; St. Louis, Missouri, Missouri Pacific, C. B. & Q.; San Antonio, Texas, Southern Pacific; Toledo, Ohio, L. S. & M. S.; Washington, D. C., B. & O.;

Waterloo, Iowa, C. G. W.; Wheeling, W. Va., B. & O." There is a note at the bottom of his list reading as follows: "There are special requests for routings at times which will be communicated to the railroad companies, and as they are important in handling the business, we hope they will receive careful attention or will be promptly advised of any reason making it impossible."

Q. What reply did you make to that?

A. We allowed the deliveries, sir. That was followed by a letter, November 29, 1901, reading as follows: "Mr. E. Chambers, G. F. A., Santa Fe Railway system, city: Dear Sir: Returning you herewith the list of our preferred deliveries, it is my understanding that the points after which you have put an interrogation point, are
758 the ones about which you wish us to give our reasons, which I now take pleasure in doing. First, Columbus, Ohio. If we reach there via Big Four and for any reason find it impossible to handle the fruit in that market, we are able to divert to more points than from any other delivery. For instance, we can not only reach Pittsburgh, Baltimore, and Philadelphia, but we can get to New York via the Erie or we can get to Cleveland and Buffalo. This gives us the advantage over any other Columbus delivery except the B. & O. S. W., and it affords us some advantages even over that.

Des Moines, Iowa. Rock Island preferred because our Des Moines agent covers the territory eastward, including Ottumwa, Davenport and Keokuk, to all of which we can divert from Des Moines without charge if they reach there by the Rock Island. Our agent has headquarters in Des Moines, and it is very important that the fruit should be examined at that point to ascertain its condition before forwarding it to smaller towns.

Detroit, Michigan. Our Detroit agent covers all of Ontario, as far as Toronto. It is, therefore, necessary these shipments reach Detroit by either the Grand Trunk or the Michigan Central in order to examine and forward into such points as London, Brandford, Hamilton, St. Thomas and Toronto. On general principles, we much prefer the L. S. & M. S., say, for Detroit, but for the reasons above stated make it impracticable.

Galesburg, Illinois. C. B. & Q. only, for the sole reason that the dealers in Galesburg are located on the "Q" track and will not receive fruit at the others. We have found it entirely impossible to make any sales at Galesburg except with "Q" delivery. Any
759 arrangement by which you can give them that delivery will be entirely satisfactory to us.

Jackson, Michigan. Michigan Central because the fruit could be forwarded into Detroit or other points if there is any trouble with it at Jackson.

Philadelphia, Pennsylvania, B. & O. Better delivery, more convenient to the auction where the goods are sold, better attention paid to delivery and to forwarding in case of necessary diversion.

Trusting these explanations will be satisfactory, I am, yours very truly, A. H. Naftzger."

Q. What reply did you make to that?

A. We allowed the deliveries. That was followed by another letter of December 17, 1901.

Q. First—excuse the interruption—did you write to Mr. Naftzger about it and fix the interrogation points that he speaks of?

A. I did not write. Mr. Naftzger was in my office, and I went over the thing with him and made the interrogation points on the list, and he was not prepared to answer me fully, but he said he would take it to his office, and write me, which he did.

Q. And that letter was from his office?

A. Yes sir.

Q. You may proceed.

A. December 17, 1901. "Mr. Edward Chambers, G. F. A., Santa Fe Pacific railway, city. Dear Sir: Our circular requesting certain deliveries reads for Buffalo, L. S. & M. S. or Wabash. Please eliminate Wabash. Our Buffalo agent advises us that he finds it difficult if not impossible to have his fruit shipments forwarded from
760 Buffalo to points necessary to reach when arriving Wabash. He cites an instance in which he had sold a car, F. G. E. 18,927, at Oneida, at $2.90 per box, but it having arrived on the Wabash he was unable to have it delivered at Oneida, and the rate protected. Had the car been on the L. S. & M. S., he would have had no trouble of this kind. Please strike out the Wabash, and oblige, very truly, A. H. Naftzger."

Q. What did you do about it?

A. I allowed his request.

Q. Is that all you have?

A. No sir; there are more letters from Mr. Naftzger. Letter dated January 14, 1903: "Mr. E. Chambers, G. F. A., Southern California Railway Company, city. Dear Sir: Referring to memoranda which we have handed you showing the deliveries desired, we beg to ask that you will, for Boston, send a liberal share of our shipments via the Canadia Pacific. Our Boston agency does considerable business through eastern Massachusetts, New Hampshire and Vermont, and it is therefore impossible to get any trace of cars going over the West Shore and Fitchburg until they have reached Boston. Cars going via the Canadian Pacific are reported to our office by the representatives of that line, so that he can place a stop-order or diversion for Vermont, New Hampshire and Maine points. It is immaterial to us if you cut out Grand Trunk entirely or divide the business so that our Boston office will have a liberal quantity that can be used in these outside points." That letter accompanied, I think it was his list for the present season.

Q. The present season?

761 A. Yes sir.

By Mr. CALL:

Q. Whose list is that? Naftzger's?

A. Mr. Naftzger's, yes sir. That list reads as follows. He has got it headed: "Santa Fe routings, January 23, 1903."

By Mr. NORTON:

Q. How long is that list?

A. It is quite a long one.

Mr. NORTON: Well, I think we will put in a copy of that to save reading it.

Mr. CALL: All right.

Mr. NORTON: If there is no objection.

The WITNESS: All right, sir.

Q. I will ask you, is the list prepared in the form substantially as the original list that you read?

A. Yes, but it differs a little as——

Q. The routing preferred and deliveries preferred have been altered in some respects, you mean?

A. Well, I have not checked them up to see just how they compared with the year previous.

Q. Well, in what way does it differ? You started to say that it differed.

A. I think he has added additional towns to the list that he had filed with us previous years, and possibly has made some correction in some of the deliveries.

Q. Well, that is what I am getting at. The general form if it is the same as the other one?

A. Yes sir.

Q. As the original one that you read from previously?

A. Yes sir.

Q. Well, we will not read that into the record.

762 A. In answer to Mr. Naftzger's letter of January 14th, 1903, I wrote him as follows: "January 16, 1903. Mr. A. H. Naftzger, president Southern California Fruit Exchange, Los Angeles. Dear Sir: Your letter of the 14th instant, relative to Canadian Pacific routing to Boston. We shall be glad, indeed, to send some of your business that way." I made a notation to the clerk in charge, "Let some of the Southern California Fruit Exchange business for Boston be forwarded via Canadian Pacific Dispatch, with Fitchburg delivery." January 23rd—I can see now why Mr. Naftzger's list was dated January 23rd. He evidently brought it over to me on January 14th, and I talked it over with him, and as he did the previous year he took it back and put in some things he wanted to, and then sent it back to me with this letter. I probably questioned him about some things. This will develop it: "January 23, 1903. Mr. E. Chambers, G. F. A., Southern California Railway Company, city. Dear Sir: Handing you herewith corrected list of desired deliveries, we beg to say as to Springfield, B. & M. delivery is desired because if necessary we can forward the cars into Boston and have them arrive at the auction room on the Fitchburg delivery without extra charge. If they reach Springfield via the B. & A.,

there will be a ten dollar switching charge and an additional fifty cents for the use of the auction room. It is desirable, as is already indicated, that a liberal portion of our Boston business particularly go by the Canadian Pacific, in order to distribute into points in New Hampshire and Vermont. We have heretofore written to you in detail in regard to this. Very truly, A. H. Naftzger." These
763 requests were also allowed. I have a letter here from the secretary and manager of the San Bernardino County Fruit Exchange, dated Colton, California, January 24, 1903. Southern California Railway Company, Mr. Edwin Chambers, general freight agent, Los Angeles, California, "Dear Sir: The larger proportion of our shipments going forward from Highlands are destined to Boston, and as we place a good many of these shipments at North Adams, Keene, New Hampshire and outside points, I would request that you instruct your agent at Highlands to route our shipments via the Canadian Pacific. We are enabled to locate the cars while in transit much better by this line than by the Grand Trunk, and therefore accomplish the necessary diversions with much less trouble. Kindly advise me that you can do as requested, and oblige, yours truly, San Bernardino County Fruit Exchange, Earl F. Van Luven, secretary and manager." I do not find that we took any action on this matter, for the reason that the San Bernardino County Fruit Exchange is a part of the Southern California Fruit Exchange and would be covered by Mr. Naftzger's requests. Here is a letter written by Mr. R. H. Wilkinson, secretary of the Southern California Fruit Exchange, at Los Angeles, under date January 27, 1903: "Mr. E. Chambers, G. F. A., S. C. railway. Dear Sir: Kindly add to our list of routings to the various points C. R. I. & P. delivery for Peoria, making our request for Peoria read, 'C. B. & Q. at Kansas City, or C. R. I. & P.' Yours truly, R. H. Wilkinson, secretary."

Q. C. B. & Q. at Kansas City?

A. Yes sir.

Q. Did you grant that?

764 A. I am inclined to think we did. Just a moment and I can tell you. Yes sir, we gave it to the Rock Island at Kansas City, the C. B. & Q. or Rock Island at Kansas City.

Q. About how much mileage, can you tell, did the Santa Fe rails lose by that transfer at Kansas City?

A. Well, I should say in the neighborhood of 200 miles.

Q. Where would you have let go of a shipment to deliver by way of Peoria?

A. I don't recall that junction point, but it is down near Peoria; a little branch runs down there.

Q. Well, it is very close to Chicago, isn't it?

A. It is close to Chicago, yes.

Q. And the distance from Chicago to Kansas City is about 400 miles or over?

A. Something like that, yes.

Q. You may go on.

A. Here is a letter from the California Citrus Union, signed by the secretary, Los Angeles, California, April 11, 1903: "Mr. E. Chambers, G. F. A., Southern California railway, city. Dear Sir: Please arrange to supply the California Fruit Agency with a daily report of the routing of all shipments made by this company. These shipments are all billed direct to the California Fruit Agency, and this will be your authority to recognize all orders received from them in regard to making diversions and necessary disposition of our property. Yours truly, California Citrus Union, by L. J. C. Spruance, secretary."

Q. What answer did you make to that?

A. I handled it as he requested.

765 Q. You made the daily report?

A. Well, we were in the habit of making a daily report to the Southern California Fruit Exchange, giving them the deliveries of stuff that we had sent out, so that they could know just which way their fruit was going, and we did the same——

Q. But you complied with the request contained in the letter?

A. Yes sir, so that the California Fruit Agency could have full information concerning the shipments.

Q. Any further correspondence?

A. A letter from R. H. Wilkinson, sales manager of the California Fruit Agency, Los Angeles, California, April 24, 1903: "Mr. E. Chambers, G. F. A., Santa Fe, city. Dear Sir: Regarding routing of all cars shipped by this agency, we wish you would follow the routings or deliveries formerly used in the different markets by the Southern California Fruit Exchange until new lists are gotten out, and oblige, yours truly, R. H. Wilkinson, sales manager."

Q. What did you do with that request?

A. We complied with it. A letter from the California Citrus Union, Los Angeles, California, May 5th, 1903: "Mr. E. Chambers, G. F. A., Southern California Railway Company, city. Dear Sir: This will be your authority to follow any instructions that may be given you by the California Fruit Agency in regard to routing desired on shipments made by us. Yours truly, California Citrus Union, by L. J. C. Spruance, secretary."

Q. Was that granted.

A. Yes sir. I think this whole letter was read this morn-

766 ing. I am not sure.

Q. What one is it?

A. A letter from Mr. E. L. Summers of the New York Central & Hudson River Railroad Company.

Mr. CALL: No, that has not been read.

A. "Chicago, January 13, 1902. Mr. E. Chambers, G. F. A., Santa Fe Pacific railroad, Los Angeles, California. Dear Sir: The following receivers of oranges at Troy, New York, are very anxious, indeed, that their traffic shall arrive via the New York Central as our distance from Buffalo to New York is about 100 miles shorter than any other line. I wish you would kindly arrange so that future

consignments to these parties will be forwarded in connection with the New York Central railroad, and very much oblige: Battaglia Brothers, J. Teilman & Son, H. H. Darling, Benedict & Company, E. E. Darling & Company, Stout & Metcalfe, W. E. Kerrin & Company. Yours truly, E. L. Summers, G. W. F. A.," Mr. Summers was written, under date January 18, 1902, as follows.

Q. By your department?

A. By our department, yes sir. "Mr. E. L. Summers, G. W. F. A., N. Y. C., Chicago, Illinois. Dear Sir:——"

By Mr. CALL:

Q. Who is that? What is his business?

A. General western freight agent, New York Central at Chicago, Illinois.

Mr. CALL: Yes.

A. Those are the initials that we use. "Dear Sir: I have your letter of the 13th instant asking that citrus fruit for various firms
at Troy, New York, be routed via the New York Central.
767 Owing to the many requests of similar nature we have been obliged to deny such recognition from railroads for the reason that it would be almost impossible to undertake to route the business and follow out such requests. We have given your line what we consider a fair distribution of the citrus business, and if it does not show up at one point it will at another and I think when the season is over that you and your company will be satisfied with the showing that we have made. In cases of individual requests for routing of cars, if we are working a hardship on consignees, it is our desire to correct it as much as possible, and to that end I will give your request my attention." I wrote Mr. Bardell, our general agent at New York, under date January 18, 1902: "Mr. J. S. Bardell, general agent, New York. Dear Sir: Here is a letter from Mr. Summers of the New York Central at Chicago, together with carbon copy of my reply, relating to routing of citrus fruits for certain firms of Troy, New York, via that line. You can see from what I have said to him our position exactly. I wish you would look into this and write me fully with return of these papers." Mr. Bardell replies, under date "New York, January 25, 1902. Edward Chambers, Esq., general freight agent, Los Angeles, California. Dear Sir: Returning herewith your letter of January 18th, B. 3256, with all papers, I think myself it would be well to give the New York Central practically all, if not all, of the citrus fruit into Troy, owing to their terminal facilities there. While the citrus fruit dealers are not located on any tracks, the New York Central is prepared to give them very much better service than is the D. & H., and it would please them all, practically,
if they had it that way. The D. & H. have the best
768 facilities at Albany for this business as practically all the handlers are located on the D. & H. tracks. I don't know that I am prepared to recommend that we give the D. & H. any

more to Albany than they are getting to-day, fifty per cent., but I think that it would be well to change Troy to the New York Central, at least quite largely that way. Yours truly, J. S. Bardell." Mr. Bardell's giving what I thought a good reason, I made a note to the routing clerk in charge, "Give to the New York Central a share of the Troy business, say, about 75 per cent. W. G. B." That, I think covers all. Yes, it does cover all the papers that I have.

Q. This request for additional business at Troy from the New York Central & Hudson River Railroad official is similar, as I understand it, to one or two requests from other connecting carriers that you read this morning?

A. Yes sir.

Q. Did you have any correspondence or any dealings or any understandings, verbally or otherwise, with connecting carriers respecting the distribution of citrus fruit different from those that you have here read in evidence?

A. No sir.

Q. In acceding to the requests of shippers to route or divert, did you deal with any shipper or class of shippers of citrus fruit differently from the manner in which you dealt with others.

A. No sir.

Q. Did you give to the shippers, consignors, the routing and delivery that they asked for, if after inquiry you found that
769 there were no reasons, as you considered them reasons, for refusing?

A. I did not always give them the routings they asked for, but we invariably gave them the deliveries they asked for.

Q. What was the reason for your reserving the right to route since January, 1900, in cases where you thought you should route?

A. To avoid any possibility of irregularities in line with the tariff governing at that time.

Q. Well, be more specific, if you can.

A. Well——

Q. What irregularities do you refer to?

A. Rebates, for instance.

Q. Were they existing at the time, these irregularities?

A. They were prior to the time that the initial lines took control of the routing.

Q. And have they existed since?

A. Not to my knowledge.

Q. Are you in a position to have knowledge?

A. I see nearly all correspondence that comes into the office. I am in direct touch with the handling of the business over the rails of the Santa Fe which originates in California, and naturally those things would come to my attention.

Q. The eighth paragraph of this routing circular for the season of 1902-3, being the same as is contained in the routing circular for 1901 and 1902, states that it is for the private information of the

agent to whom it is sent, must be kept under lock and key
770 and not be shown to any outsiders or employé, except such employés as have to use it in their station work, and representatives of the freight department and general officials of the Southern California railway, and that agents will be held strictly accountable for the proper care of this circular. Can you tell what was meant by that?

A. Yes sir.

Q. What was it?

A. Our connecting lines have representatives in California,
771 known as commercial agents, general agents, traveling agents. The initial carriers have a great deal of un-routed business given to them. By unrouted business I mean a shipment may be brought to the station destined to some point beyond our own line. No routing whatever is specified by the shipper. We call that unrouted business. These various agents solicit our local agents to have their business routed by their line. It was for the purpose of keeping information contained in that circular away from such solicitations as that, for one reason.

Q. Well, for example, you didn't want the K. K. K.—what is that?

A. Well, that is a little belt line.

Q. Well, the I. I. & I.?

A. Well, that is a belt line.

Q. And B. & O. at Akron Ohio, to know that the Erie at the same point was getting 50 per cent. of the routing?

A. Yes sir.

Q. Was that one of the reasons?

A. That was one of the reasons.

Q. Why not?

A. Well, if we were to listen to the *sloicitations* of these various agents and accede to them all as they came up, without some good and sufficient reason beyond the mere solicitation of the business, I doubt if we would ever be able to handle it in a satisfactory manner to either the shipper or ourselves.

Q. In like manner you didn't want the other road at Akron to know what the competitor was getting?

A. That is right.

772 Q. What other reasons were there?

A. Well, it would enable these agents to become possessed of information as to the distribution that we might make, say at New York, Boston, Philadelphia, Buffalo, Detroit, and they could then go around to shippers and make a rebate deal, for that matter, under which arrangement the shipper would ask for certain deliveries at certain points without giving what we thought was a good and sufficient reason.

Q. Is it true, also, that the soliciting would become pestiferous, annoying?

A. Yes, you might call it so.

Q. I notice in this routing circular, under the instructions to agents to distribute shipments in accordance with the percentages shown in this column, for example, at Baltimore, Maryland, you say, "Route by Santa Fe to K. K. K." What does that mean, the belt line?

A. That is Kankakee. That goes through Kankakee to strike the I. I. & I.

Q. Care of the I. I. & I., B. & O. delivery?

A. Yes sir.

Q. Eighty per cent., and at Baltimore, the remaining twenty per cent. care of the I. I. & I., Pennsylvania delivery. I will ask whether that routing is direct as to distance?

A. Yes sir.

Q. The most direct that you could make?

A. Yes sir, I think it is.

Q. At Boston, Massachusetts, you divert care of the I. I. & I., Kankakee, the Lake Shore, the W. S.—what is that?

A. West Shore.

773 Q. West Shore, and deliver Fitchburg. Is that a direct shipment, the most direct?

A. Will you read that route again, please? There are several in there and some of them are not direct and some of them are.

Q. Boston, Massachusetts, route over the Santa Fe K. K. K., care of I. I. & I. L. S. W. S. Fitchburg.

A. Yes, that is a direct routing.

Q. Also, Boston, Massachusetts, by way of Santa Fe, K. K. K., care of I. I. & I., G. T. & N. D. L. That is Grand Trunk, direct, and what is N. D. L.?

A. N. D. L. is the National Dispatch Line, which operates over the Grand Truck.

Q. Is that a direct route?

A. Yes, sir, that is a direct route.

Q. Now, for example, at Buffalo, New York, you give twenty per cent. care of the I. I. & I., Lake Shore and Michigan Southern, twenty per cent. care of the I. I. & I. and Michigan Central, forty per cent care of the I. I. & I. and Grand Trunk, and twenty per cent. in care of the I. I. & I.——

By Mr. CALL:

Q. What are those three I's?

A. The three I's, which runs from Kankakee. Kankakee is the junction. From Streator, rather; from Streator, Illinois, through to South Bend, Indiana, and Streator, Illinois is the junction point with our line.

Q. What does I. I. I. stand for?

A. Stands for Illinois, Indiana and Iowa railroad. It is a belt line which reaches all lines. We turn it over at Streator.

By Mr. NORTON:

774 Q. Now, can you explain why you give to one of these routings twenty per cent., another twenty, another forty, and another twenty?

A. What point is that?

Q. Buffalo.

A. Yes. We have in mind in making that distribution the deliveries asked for by shippers, and the possibility of diversion and protecting the through rate, as is uniformly asked for by the shipper when a diversion is requested.

Q. In giving to one route, say, twenty per cent. and to another forty, do you take into consideration the relative ability of the lines to handle traffic with expedition?

A. Yes sir.

Q. Do you take into consideration the promptness of the two lines—comparative promptness—in settling differences for delayed, lost or damaged fruit?

A. Yes, I have made that a pretty strong condition with some of the lines when their representatives have called to see me.

Q. Do you take into account the relative ability or inclination of the two carriers to return promptly empty equipment?

A. Yes sir.

Q. Do you take into account the relative ability of the two carriers to return your equipment with loads of freight? Is that a consideration?

A. Well, to a certain extent. We never have pressed them hard on that point. We have to get the cars back.

Q. Who makes these distributions? Who figures them out?

775 A. Well, it is done principally by Mr. Chambers, with my assistance.

Q. The general freight agent?

A. Yes sir.

Q. Does he, or do you and he, do it alone? By that I mean do you make these distributions without consulting the connecting carriers to whom the distributions are to be made?

A. Yes sir, we do.

Q. Do your connections know what these distributions are?

A. No sir, up to this time they do not.

Q. Do you vary these distributions from time to time?

A. Yes sir. We are not obliged to follow that distribution at all. That is merely as a guide.

Q. Is the distribution, as a matter of fact, followed exactly?

A. No sir, it is not.

Q. Is it practical to follow it exactly?

A. No, it is not, if we consider the requests that are made on us.

Q. Have you ever taken away from any of these routings, or distributions, I should say, or from any of the distributions provided for in the circular of 1901–1902, or in the circular of the preceding season,—there was one before this, was there not?

A. Yes sir.

Q. And I understand that you stated that the text of these three circulars is substantially alike?

A. Yes sir.

776 Q. —any part of the shipments or distributions provided for as to any particular carrier, connecting carrier?

A. Yes, we did on one occasion.

Q. Well, do you vary these at will?

A. Yes sir.

Q. Or not.

A. We do.

Q. Has anybody except your office, you and Mr. Chambers, any authority over these distributions?

A. Yes sir.

Q. Who is it?

A. Our superior officers would necessarily have authority over them, but they have never exercised it.

Q. I mean is there anybody out of the service of the Santa Fe system of railways that has anything to say about these distributions?

A. No sir, I think not.

Q. Is there anybody outside of the traffic department that has had anything to say about the preparation of these distribution sheets, circulars?

A. No sir, there has not.

Q. I will ask whether the correspondence that you have read from representatives—from officers, traffic men, of the New York Central & Hudson River railroad, the Kansas City Southern railway, and the other railway companies mentioned in correspondence that has been read today, are the only conferences or transactions that you have had with those companies, or with other companies, respecting the distribution of citrus traffic?

777 A. They are.

Q. That is, in writing.

A. Yes sir.

Q. Have you had requests made verbally similar to those that you have read here this morning?

A. Oh, yes. There is hardly a day that some of the representatives of our connections don't drop into my office and ask me to give them more citrus fruit business, and so forth, soliciting it all the time.

By Mr. CALL:

Q. What reply do you make to those requests, usually?

A. Why, about generally as I have written in there, that we cannot pick out any one point, that at the end of the season it would show up all right for them.

By Mr. NORTON:

Q. Do the conditions which govern you and Mr. Chambers in the making of these distribution tables as to citrus fruit differ from the conditions existing as to the distribution of other freight?

A. No. I should say not. No sir, they do not. We take into consideration that which is best for the commodities moving.

Q. Now, although this has been covered by different interrogatories, I want to ask you directly whether there exists, or has ever existed, since 1900, when the right to route citrus fruit was reserved by the initial carriers, involved in this case, any understanding of any sort with connecting carriers in any part of the United States or Canada, or with car companies, their representatives or agents, about the amount of business that should be distributed to
778 any railroad line or car line?

A. No sir. Most emphatically, no.

Q. Or as to the division of freight receipts from citrus traffic?

A. Only as governed by what is known as our division sheet.

Q. The same as applies to other traffic?

A. The same as applies to other traffic.

Q. In the handling of citrus fruit and in the distribution of it as we have considered it here, can you state whether all shippers have been treated alike by the lines of the Santa Fe system?

A. That has been our aim, to do so, and I think that we have conscientiously carried it out.

Q. Now, Mr. Barnwell, I understand that all the correspondence that you have read and the verbal statements that you have made, particularly the correspondence that you have read, arose out of and was read in explanation of this circular letter number 41 E, the routing circular of 1901 and 1902, and also the routing circular of 1902 and 1903?

A. Yes sir.

Q. The correspondence proceeded from the issuance of these circulars?

A. Yes sir.

Q. And what you have read and stated, I will ask whether it is all the official information in your department respecting the routing of citrus fruit over lines connecting with the defendant railroad lines, and determining or showing the percentage or division
779 of freight to be received by connecting carriers?

A. Yes sir.

Q. I understand you to say and I have a note here, not being sure about it, that the practice of handling and routing and distributing citrus fruit which you have described has prevailed since January 1, 1900, the time that the reservation of the right to route was declared.

A. Yes.

Q. Please state, if you know, why the right to route was asserted by the Santa Fe companies, the companies of the Santa Fe system—in January, 1900?

A. As I am informed, it was done because connecting lines and car lines were paying rebates and affecting the revenues of our company.

Q. Well, your information is not competent. Do you know anything about it?

A. No, only as it comes to me through my superior officers.

Q. Did you ever hear any of the shippers say that they were getting rebates?

A. I don't recall now. No, I do not.

Mr. NORTON: Now, because these letters that have been read are the original files of the office, I have had them read into the record, and I shall not offer them in evidence, but if counsel desire we will present copies, with his permission, subject, of course to his objections.

Mr. CALL: Well, I have no objection to the letters as read standing in lieu of the papers themselves. But I object to the pa-
780 pers themselves, and to each of them, as not cross examination, and as incompetent, irrelevant and immaterial.

Mr. NORTON: The letters and papers were read in explanation of the routing circulars introduced in evidence by the complainant. That is all.

Redirect examination.

By Mr. CALL:

Q. Mr. Barnwell, what has been the total amount of citrus fruit shipped from southern California this year, at this time, as near as you can state?

A. As near as I can state——

Q. For the citrus fruit season ending at the present time, or just closing?

A. I think it has been—it is between twenty and twenty-one thousand that have been shipped east.

Q. Carloads?

A. Yes. Both lines.

Q. What part of that has the Santa Fe carried?

A. I think we have carried considerably over ten thousand. I think it is pretty near eleven thousand cars.

Q. And last year, the season closing the year before, how much did you ship?

A. I have not got those figures.

Q. Well, Mr. Chambers' testimony shows——

A. I think all those figures were given in his testimony and I could not recall them from memory.

Q. Now, the testimony in the case shows for last year that there were about 24,000 cars shipped east from southern California, and for the year before that about 16,000 cars, and for the year before that 22,000 cars, and for the year before that 16,500 cars. Of
781 which the Santa Fe carried about half. Now, since the routing rule of the Santa Fe railroad went into effect, it has

shipped approximately 40,000 carloads of citrus fruit east. Now, state whether the communications which you have had from shippers and which you have read in evidence here comprise all of the routing instructions or routing requests that have been made by shippers during that period.

A. It does not cover all the requests that have been made in that period, no sir.

Q. What proportion of the requests does it cover?

A. Well, that is pretty hard to tell.

Q. Well, what would be your best judgment, best information.

A. Well, I could not guess on that, for this reason, Mr. Call, that shippers will go to our agent and ask for deliveries. They are given. I don't know anything about it at all. He has authority to do that in this circular. Individually the shippers, such as Fay Fruit Company, Earl Fruit Company, Spruance Fruit Company, Sparr Fruit Company, would come to my office with a diversion order, they would ask for certain deliveries that would be given to them right on the spot. We would not have any correspondence on that at all. The correspondence part of these requests for deliveries is small compard with the total number that we handle.

782 Q. Then the correspondence that you have brought in here relating to routing requests comprises only a small part of the requests that have been made.

A. Yes sir, a small part of the requests that have been made. I have produced all the papers, as you have asked for them.

Q. Papers in your custody?

A. Yes sir. Well, I am only talking about our own office.

Q. I understand. Have you any information as to what was done with the numerous other requests that were made regarding routings, routes and deliveries?

A. Nearly all requests that come into my office are either passed on by myself or the chief clerk, and we have invariably granted them if we have found or known the reasons to be satisfactory, and I think our agents in the country have acceded to the requests. I don't know that I have had my attention called to any case where our agent has refused.

Q. You are talking about deliveries?

A. I am talking about deliveries.

Q. Now, explain what you mean by "deliveries" and as that term is used in the various correspondence which has been read in evidence?

A. "Delivery" means the delivering line. If he asks for B. & O. delivery it means B. & O. into, say, Boston.

Q. Then there may be a number of lines of railroad between the delivering road and the initial carrier?

A. Yes sir.

Q. And the request does not cover——

A. The request does not cover.

783 Q. The requests haven't covered the intermediate lines?

A. In some cases they have, and when they have been in line with instructions to the agents that the fruit passed through certain towns that have two or more railways, they have been complied with.

Q. How many of those requests there for deliveries include also routings, that you have read in evidence? Or do any of them?

A. I don't believe any of them include routings at all. I think they are all deliveries.

Q. I thought so. I noticed that in the requests of Mr. Naftzger that he only desired deliveries by certain lines, but didn't undertake to direct routings between the delivering road and the initial road?

A. In fact he says in there that any route that will reach that point there is perfectly satisfactory to him, but he wants the deliveries.

Q. Yes.

A. Which we have given him.

Q. Now, you stated on direct examination that the percentage table for each year determining the amount of citrus fruit to be carried by connecting lines was prepared by the general freight agent?

A. Yes.

Q. Of your company?

A. Yes sir.

Mr. NORTON: Cross-examination?

Mr. CALL: No, on direct examination.

Mr. NORTON: He said that to you?

784 Mr. CALL: Yes, he said that on direct examination.

Q. Now, do I understand that that is a fact, or that you took part in the preparation?

A. I assisted Mr. Chambers under his direction.

Q. Wait until I get through. Preparation of those percentage tables?

A. I assisted Mr. Chambers under his direction.

Q. Can you state of your own knowledge what was the basis upon which those percentages were given to the different connecting lines?

A. Well, doing the work as I have been doing, and working with Mr. Chambers when it was made up, my idea of the basis was that we want to take into consideration the direct route, service, facilities for delivering, ability to divert and protect the through rate, the adjustment of claims, return of equipment, and service generally.

Q. Well is it not a fact that the chief basis or ground of allowing the percentage is the amount of general freight returned by the connecting line?

A. That in a certain degree may be considered, but not to any extent.

Q. Well, you stated on direct examination that the percentage tables had not been materially changed from year to year, that the

changes of percentages hadn't been material or great. If that is so, then the conditions upon which you fixed those percentages for the present year were the same as at the time when you first adopted the percentage tables in January, 1901. That is, there has
785 been no change of basis from 1901 to the present time?

A. I don't think there has been.

Q. The deliveries have been equally good and the facilities the same and no change in directness of routes?

A. The amount of freight is substantially the same. I think it shows up about the same.

Q. And it runs along about the same?

A. I think it will run about the same.

Q. From year to year?

A. Yes sir; same relative distribution.

Q. You also stated that the percentage instructions which were given at the beginning of each citrus fruit season were substantially carried out at the end of the season, that there was no material difference in the actual result and in the percentages directed to be given?

A. Did I say that?

Q. Well, didn't you say that?

A. Well, I don't know.

Q. Or to that effect?

A. The record will show. I would like to know just what I did answer to that, how the question was put.

Q. I may be in error as to exactly what you said about that, but would like to know now.

A. Yes sir.

Q. What the result has been at the end of the citrus year as compared with the percentage issued at the beginning of the citrus fruit season.

A. Mr. Call, I don't see how you can make any comparison. As I have said in my testimony, there, those percentages shown
66 in there are merely as a guide. We are not obligated to follow out those percentages to the letter. Now, it would be a pretty difficult matter at the beginning of the season to say that, for instance, the Erie shall get twenty per cent. or twenty-five per cent. of the citrus business. It would be fifteen per cent. or twenty per cent. of what? I can't tell what it is. If it were the cars east of Chicago, why, those cars east of Chicago a great many of them go to Michigan, and some go as far as Detroit and some only a short distance on the other side of Chicago. I don't see how you could determine any set percentage of anything to the Erie Despatch, unless that you were to take, just for illustration, the number of cars that the Santa Fe have sent east of Chicago. That may be ten miles or may be 300 miles or it may be 500 miles or a thousand miles, near to the Atlantic coast.

Q. I knew you tabulated returns once a month to show what the percentage is.

A. No sir, I don't; not to show what the percentages are.
Q. Not to show?
A. Just the number of cars.
Q. Here is the question asked you on direct examination: "At the end of the season you compile the reports or prepare a report to show exactly what went over each connecting line, do you not?"
A. Yes sir.

Q. "A. No, as a matter of information we prepare that every
787 month. Q. Every month? A. Yes sir." Now, what do you mean by that? You say you prepare that report?

A. You said just now that I said in direct examination that we prepared a statement which showed the percentages. I say we don't. I didn't answer that way in my direct examination.
Q. That was the question that I asked you.
A. Well, if I—I don't understand that your question asked for percentages there, did it?
Mr. CALL: Yes.
Mr. NORTON. Two different questions.

By Mr. CALL:

Q. Well, you can state now what those reports contain.
A. If I answered you that we do make out percentages, I was in error, for we do not.
Q. State now what those reports you referred to do contain.
A. Simply kept a record of all shipments that travelled over every connection that we had, and we had it at the end of the month to show what cars we had on each line each month.
Q. That shows the total amount of freight carried by each line?
A. Shows the total number of cars that we have delivered to each connecting line, yes sir.
Q. Then such report would show whether that connecting line had got the percentage allowed to it in the percentage table?
A. There you come to percentages again. I don't see how you can figure it. I can't, Mr. Call. It is a percentage of what?
788 I can't do it. I can take the distribution of business to New York and say that the Erie will get twenty-er cent. and some other line will get twenty per cent. But you take a general distribution, I can't say a percentage of what.
Q. I supposed there was the same percentage you had stated in the letter of instructions.
A. Well, I don't see how you could do that. I can't figure it out.
Q. Well then, in the one case you have a letter of instructions——

A. Which divides as to destination.
789 Q. Which divides the business according to certain amounts to destination?
A. As to destinations, yes sir.

Q. And in your report you compile the actual number of cars transported over the connecting lines?

A. Over the connecting lines but not as to the destination.

Q. But not as to the destination?

A. I have never made up a report showing the number of cars that went into New York city.

Q. I understand. But it shows everything but the destinations. It shows the number of cars that go over each of the connecting lines?

A. Yes sir.

Q. Well, what do you do with that report?

A. It is kept in our office, and a copy is sent to each one of our superior officials.

Q. Well, do you compare with the Southern Pacific Railroad Company those monthly reports?

A. No sir, we do not.

Q. Do you hold any communication with them, by letter or verbally, concerning the distribution of the citrus fruit freight and the amount carried?

A. Yes, in a general way, when it comes to a matter of car supply we talk it over. If they are short of cars—or rather if we are short of cars, we will ask them to send their cars over and we will load them up and let them go back over the Southern Pacific—let them go east over the Southern Pacific. We keep the shipments moving.

7900 Q. If they are short of cars you will furnish them fruit cars? Is that what you said?

A. No. I said if we are short of cars we would take their equipment and load it on our rails and ship east via their line.

Q. If you are short of cars you will use their cars?

A. Yes sir, to load back to their line, but their cars don't go east over our line.

Q. And what do you do in case they are short of cars?

A. We do the same way, if they will take them. They are there for them. We offer them the shipments of the cars, if they want them. And those cars would go east over our line if loaded on their rails.

Q. As a matter of practice and custom, does the Southern Pacific—or, I will say, the Santa Fe railroad enforce any regulation or rule reserving the right to route freight over connecting lines other than citrus fruit freight?

A. Yes, I think there are occasions when it is done.

Q. Can you mention any occasion when it has ever been done?

A. In case where we—well, I don't know that I can now. I don't know that I can mention any specific case now. No sir, I cannot.

Q. Well, as a matter of fact, don't you know that that regulation is not enforced?

A. No, I don't.

Q. But with your experience here as assistant general freight agent for a number of years you can't name a single instance?

791 A. I can't recall it now.

Q. Wait a moment. Instance in which the Santa Fe railroad has enforced such a rule as to any freight other than citrus fruit freight?

A. I can't recall now, but I could give a general instance in which such a case might be, and no doubt but what some of them have presented themselves.

Q. Well, you may illustrate.

A. Well, supposing a shipment were offered at Los Angeles going to a point with the connection—going to a point on a connection with which we had no through established percentages. We would arrange with that line to participate in the rate applicable to that point. We would then name the routing, instruct our agent how to route the shipment.

Q. But you do enforce that regulation or rule as to routing of citrus fruit?

A. According to the tariff.

Q. Then you make a difference between citrus fruit and other freight in that regard?

A. The tariffs make a difference, yes sir.

Q. Then you didn't mean it when you said that there was no discrimination or difference as to freight when you testified on cross-examination?

A. I would like to have that question read. I don't recall it.

Q. I believe you undertook to say that there was no discrimination against orange shipments.

Mr. NORTON: Well, the question was objected to as asking for a conclusion, anyway.

792 Mr. CALL: Well, that is what I thought when you asked the question.

Q. You were not referring, then, to discriminations or differences in regard to different commodities?

A. I was talking about the citrus fruit, sir.

Q. Does the correspondence which you have produced concerning requests of certain connecting lines comprise all of the correspondence which you have asking for routings over those lines other or different than shown in the percentage table?

A. Yes sir.

Q. So that during a period of nearly three years the only requests that have been made or that have come into your office are those dozen or half dozen requests from connecting lines?

A. Written requests.

Q. Well, have there been any verbal requests?

A. Yes sir.

Q. You don't know how many, though?

A. No, I can't say. I could not undertake to answer that. It would be mere guess-work. I could not form any opinion at all.

Mr. CALL: That is all.

Recross-examination.

By Mr. NORTON:

Q. Your statement that the requests mentioned in the correspondence were for delivery only, and not for routing—as to
793 that, I want to inquire by what carrier, if any, were rebates made to the shippers? The intermediate carriers or the deliveries?

Mr. CALL: If you will excuse me, Mr. Norton, I forgot to ask a question that might save time if you will let me interject it here.

Mr. NORTON: Yes.

By Mr. CALL:

Q. I wanted to refer to the reasons you gave for reserving the right to route citrus fruit. You mentioned at one time that it was to prevent rebates being given, or something like that. Did you not?

A. That was my understanding, yes sir.

Q. And to prevent cutting of the rate?

A. And irregularities of the tariff.

Q. And to prevent making a rate difference from that given on the joint tariff?

A. Yes sir, that was my understanding.

Q. Well, do you think that the reservation of the right to route by those defendants as initial lines controls those matters and prevents those things?

A. Are you asking for my opinion now?

Q. Yes, and as a matter of fact?

A. It certainly does.

Q. It prevents the giving of rebates?

A. I think it does.

Q. And a cutting of rates?

A. I think it does.

Mr. CALL: That is all.

By Mr. NORTON:

Q. As a matter of fact, Mr. Barnwell, before the right to
794 route was enforced, there was no rate cutting, strictly speaking; it was a giving of rebates, was it not? That is, on the face of things, the tariff rate was charged, and then subsequently the rebate was returned?

A. That is what we call cutting rates.

Q. Well, I refer to this to distinguish it from a reduction of rates on the tariff.

A. Oh, a reduction of the rate on tariff, is a regularly legalized, authorized rate, a published reduction, or published change, you might put it.

By Mr. CALL:

Q. Well, has the routing rule had the effect of preventing a reduction of the rate?

A. I don't—there has been a reduction in the lemon rate.

Q. Well, how about the orange rate?

A. I don't know of any published reduction in the orange rate since the thing went into effect.

Q. But the reduction of the lemon rate that you refer to was made—it was a rate that was made by the initial carriers, was it not, in which they participated?

A. The which?

Q. The lemon rate reduction?

A. Yes sir.

Q. What was called the emergency lemon rate?

A. Yes sir, upon representations the carriers——

Q. Well, the initial carriers, the Southern Pacific and Santa Fe, participated in that reduction?

A. Yes, in that published reduction, yes sir.

Q. Yes.

795 A. It was a regularly authorized sheet, and I think it is embodied in that tariff.

By Mr. NORTON:

Q. You stated, Mr. Barnwell, that in a case where there was no through rate provided for with a connecting carrier, that you would procure an agreement to a rate and then control the routing that way on other commodities than citrus fruit?

A. Yes sir. If a shipment so presented itself.

Q. Then, we are to understand that one of the reasons of controlling the routing is to protect the through rate?

A. Yes, I should say that would be one of them.

Q. You were asked whether the right to route is asserted with respect to other commodities as it is with respect to citrus fruit. I will ask whether, in your experience, the giving of rebates has ever prevailed with respect to other commodities as it has with respect to citrus fruit shipments?

A. I don't believe that it has to the extent that it did in citrus fruits.

Mr. CALL: Well, the witness just testified, Mr. Norton, that he didn't know of his own knowledge that any rebates had been given.

Mr. NORTON: Well, you examined him on that.

Mr. CALL: No, you examined him on that. He stated that on cross-examination.

Mr. NORTON: But afterwards you examined him on this point

and brought out this statement. So we will let it go for what it is worth. That is all.

W. G. BARNWELL.

The EXAMINER: We will take an adjournment until next Monday at 2 o'clock p. m.

796 On Monday, November 2nd, 1903, at two o'clock p. m., by consent of the parties, an adjournment was taken to Wednesday, November 4th, 1903, at the same hour, the witnesses not being excused from attendance.

On Wednesday, November 4th, 1903, at two o'clock p. m., the further taking of testimony herein was resumed.

Present: L. H. Valentine, United States attorney; Joseph H. Call, special assistant United States attorney; Frank P. Flint, attorney for South-Pacific Company; T. J. Norton, attorney for the Atchison, Topeka & Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, and Southern California Railway Company.

And thereupon the following proceedings were had:

Mr. CALL: When Mr. Barnwell was upon the witness stand, he was asked to produce certain papers which he has now produced, and which I now offer in connection with his testimony, to-wit: East-bound special tariff, effective November 15, 1899, now marked Complainant's Exhibit 14.

The document last offered is as follows:

"I. C. C. No. 141. No. S. R. 224.

Trans-continental Freight Bureau.

East-bound Special Tariff.

797 Effective November 15, 1899.

This tariff contains the individual rates, rules and regulations of each company, respectively, and is subject to change by each company without the consent of any other company whose name appears hereon.

Applying via

Southern Pacific Company (Pacific System),

Via Ogden, Utah, Mojave, Cal., or El Paso, Tex.

Union Pacific railroad, Santa Fe Pacific railroad,
Rio Grande Western railway, Texas & Pacific railway,
Southern Pacific railway (Atlantic system),
Santa Fe system (via Mojave or Barstow, Cal.),
Southern California railway, Santa Fe Pacific railroad,
San Francisco & San Joaquin Valley R'y,
Atchison, Topeka & Santa Fe R'y,

In connection with roads named on page 2 hereof.

Naming Rates on

Citrus fruits, carloads (min. wt. 26,000 lbs),

from

The following "Pacific Coast terminals," viz:

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), San Jose, Los Angeles, San Diego and National City, Cal., Portland, East Portland and Albina, Ore., and "Intermediate points" (as shown in circular No. 16–A, amendments thereto or reissues thereof)

to

Points located on or east of the western boundary of Missouri River common points territory and points east thereof on roads with
798 which an agreed basis of divisions is in force, within the following territories:

New York, Boston and common points, Pittsburg, Buffalo, and common points; Cincinnati, Detroit and common points; Chicago and common points; Mississippi River common points; Missouri River common points.

(As described more fully on pages 2 to 6, inclusive, of east-bound tariff No. 3–B, amendments thereto or superseding issues thereof.)

In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guaranty.

The rates named in this tariff will be subject to the general rules and regulations governing the application of rates published in eastbound tariff No. 3–B, which took effect July 16, 1898, amendments thereto or reissues thereof.

Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pacific system), San Francisco, Cal.
E. Hawley, ass't general traffic manager,
So. Pac. Co., New York, N. Y.
A. D. Shepard, general freight agent,
So. Pac. Co. (Pacific system), San Francisco, Cal.
G. W. Luce, ass't gen. freight agent,
So. Pac. Co. (Pacific system), Los Angeles, Cal.
C. W. Bean, traffic manager,
So. Pac. Co. (Atlantic system), New Orleans, La.
W. H. Masters, ass't traffic manager,
So. Pac. Co. (Atlantic system), New Orleans, La.
S. H. Babcock, traffic manager,
R. G. W. R'y, Salt Lake City, Utah.
799 W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
W. A. Bissell, ass't traffic manager,
Santa Fe system, San Francisco, Cal.
J. E. Gorman, general freight agent,
A. T. & S. F. R'y, Topeka, Kas.
E. Chambers, general freight agent,
Santa Fe Pacific R. R., S. F. & S. J. V. R'y and So. Cal. R'y Los Angeles, Cal.
E. L. Sargent, general freight agent,
Texas & Pacific R'y, Dallas, Tex.
J. A. Munroe, freight traffic manager,
Union Pacific R. R., Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal., October 27, 1899. Issued by R. H. Countiss, agent, 49 Second St., San Francisco, Cal.
Sent to I. C. C. 10–28–'99 (Auth. 522).

The through rates provided herein will apply in connection with the following named roads the traffic officials of which will certify their concurrence therein to the Interstate Commerce Commission:

Western Roads.

Atchison, Topeka & Santa Fe R'y.
Burlington & Missouri River R. R. in Nebraska.
Burlington, Cedar Rapids and Northern R'y.

Williams Valley R. R.
Wilmington & Northern R. R.
York Southern R. R.

New England Roads.

Bennington & Rutland R'y.
Boston & Albany R. R.
Boston & Maine R. R.
Central New England R'y.
Central Vermont R'y.
Fitchburg R. R.
Grand Trunk R'y.
Maine Central R. R. (White Mountain div.)
Montpelier & Wells River R. R.
New England R. R.
New York, New Haven & Hartford R. R.
(New Haven system.)
807 New York, New Haven & Hartford R. R.
(Old Colony system.)
Portland & Rochester R. R.
Rutland R. R.
St. Johnsbury & Lake Champlain R. R.

Southeastern Common Points.

(For application of rates to southeastern common points see page 6 of tariff.)
Alabama Midland R'y Co.
Atlanta & West Point R. R. Co.
Atlanta, Knoxville & Northern R'y Co.
Atlantic Coast Line.
Baltimore, Chesapeake & Richmond St'mb't Co.
Brunswick & Western R. R. Co.
Cape Fear & Yadkin Valley R'y.
Central of Georgia R'y Co.
Charleston & Savannah R'y Co.
Charleston & Western Carolina R'y.
Columbia, Newberry & Laurens R. R.
Columbus Southern R'y Co.
East & West R. R. Co.
Florida Central & Peninsular R. R. Co.
Georgia R. R. Co.
Georgia & Alabama R'y Co.
Georgia Southern & Florida R'y Co.
Merchants & Miners Transportation Co.
New York & Texas Steamship Co.
Norfolk & Western R'y.
Ocean Steamship Co. of Savannah.

808 Old Dominion Steamship Co.
Plant system.
Savannah, Florida & Western R'y Co.
Seaboard Air Line.
Southern Railway Co.
Western & Atlantic Railroad Co.
Western Railway Co. of Alabama.
Wilmington & Weldon R. R. Co.

Also

Chattanooga, Rome & Southern R. R.
Illinois Central R. R.
Kansas City, Memphis & Birmingham R. R.
Louisville & Nashville R. R.
Memphis & Charleston R. R.
Mobile & Ohio R. R.
Nashville, Chattanooga & St. Louis R'y.
Queen & Crescent route:
Cincinnati, New Orleans & Texas Pacific R'y.
New Orleans & North-Eastern R. R.
Alabama Great Southern R. R.

2.

Oranges and lemons in packages or in cars having fixed or transient crates for same, O. R. weather, decay, shortage, and delay, prepaid or guaranteed, at estimated weights shown below, in carloads—minimum weight, 26,000 lbs.

Estimated Weights.

Oranges—72 pounds, when in standard size boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where oranges are packed, 11½ by 11½ by 24 inches.)

809 Lemons—84 pounds per box of standard size, outside measurement 11 by 14½ by 27 inches.

If boxes of irregular sizes are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.

From

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), San Jose, Los Angeles, San Diego, and National City, Cal., Portland, East Portland, and Albina, Ore., and "Intermediate points" as shown in circular No. 16–A, amendments thereto or reissues thereof.

To	Rate.
* Missouri River common points * Mississippi River common points * Chicago and common points * Cincinnati, Detroit and common points * Pittsburg, Buffalo and common points * New York, Boston and common points	$1.25 per 100 lbs.

* As described on page 2 to 6, inclusive, of east-bound tariff No. 3–B (I. C. C. No. 197), amendments thereto or superseding issues thereof.

NOTE 1.—The rate named above will also apply from stations on the Ventura branch of the Southern Pacific Company (Pacific system), including points on Montalvo extension, viz: Oxnard, Somis, Cal., and points between; also from stations on the Oroville branch of the Southern Pacific Company (Pacific system).

NOTE 2.—Vegetables may be taken in mixed carloads with oranges and lemons at the rate named above to Missouri river, Mississippi river and Chicago and common points.

810 NOTE 3.—The rate named above will also apply on the other citrus fruits named below:

"Citrus fruits" are the fruits of trees such as the orange, lemon, citron, etc., whose leaves do not fall in autumn. The principal "citrus fruits" are oranges, lemons, limes, mandarines, tangarins, citrons and grape fruits.

Rate from Points East of Sacramento, via El Paso or Mojave.

The rate named above will apply via Southern Pacific Co. (Pacific system), from

Loomis..... Cal.	Newcastle..... Cal.	Clipper Gap..... Cal.
Penryn..... "	Auburn..... "	Applegate..... "

New England Mills..... Cal.
Colfax..... "

Via El Paso, Tex., in connection with
Atchison, Topeka & Santa Fe R'y, in connection with G. C. & S. F. R'y, (Via Ft. Worth, Tex.)
Chicago, Rock Island & Pacific R'y,
Chicago, Rock Island & Texas R'y,
Gulf, Colorado & Santa Fe R'y, (Via Ft. Worth, Tex.)
Kansas City, Pittsburg & Gulf R. R.,
Missouri, Kansas & Texas R'y,
Missouri Pacific R'y,
St. Louis & San Francisco R. R.,
St. Louis, Iron Mountain & Southern R'y,
St. Louis Southwestern R'y,
Southern Pacific Co., (Atlantic system),
Texas & Pacific R'y,

811 And their connections.

Via Mojave, Cal., in connection with
Atchison, Topeka & Santa Fe R'y,
Santa Fe Pacific R. R.

And their connections.

Divisions.

In division, local rate from point of shipment to Roseville, Cal., as shown below, first to be deducted, remainder to be divided on basis of established divisions.

On shipments destined to points east of the Mississippi River common points territory, via a direct line to St. Louis, lines east of St. Louis or Mississippi River crossings, should be allowed their regular proportion of terminal rate.

On traffic moving via Missouri River crossings, Sioux City, Iowa, to Kansas City, Mo., inclusive, lines east of Missouri river should be allowed their regular proportion of terminal rate.

Local Rates, in Cents per Hundred Pounds.

To Roseville, Cal., from

Loomis... 4 Newcastle... 6 Clipper Gap... 9 New Englan
Mills.. 10½ Penryn.. 4½ Auburn.. 7 Applegate.. 9½ Colfax.. 11

3.

812 Also east-bound special tariff, effective January 1, 190
now marked Complainant's Exhibit 15.

The document last offered is as follows:

"Supersedes east-bound special tariff No. S. R. 224, which too
effect November 15, 1899.

I. C. C. No. 145.

Supersedes I. C. C. No. 141.

No. S. R. 230.

Trans-continental Freight Bureau.

East-bound Special Tariff.

Effective January 1, 1900.

This tariff contains the individual rates, rules and regulations
each company, respectively, and is subject to change by each co
pany without the consent of any other company whose name a
pears hereon.

Applying via

Southern Pacific Company (Pacific System),

Via Ogden, Utah, Mojave, Cal., or El Paso, Tex.

Union Pacific railroad, Santa Fe railway,
Rio Grande Western railway, Texas & Pacific railway,
Southern Pacific Company, (Atlantic system),
Santa Fe system (via Mojave or Barstow, Cal.)
Southern California railway,
San Francisco & San Joaquin Valley R'y,
Santa Fe Pacific railroad,
Atchison, Topeka & Santa Fe R'y,

813 In connection with roads named on page 2 hereof.

Naming rates on

Citrus fruits, carloads (min. wt. 26,000 lbs.),

from

The following "Pacific Coast terminals," viz:

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.) San Jose, Los Angeles, San Diego, and National City, Cal., Portland, East Portland and Albina, Ore., and "Intermediate points" (as shown in circular No. 16–A, amendments thereto or reissues thereof)

to

Points located on or east of the western boundary of the Missouri River common points territory and points east thereof on roads with which an agreed basis of divisions is in force, within the following territories:

New York, Boston and common points; Pittsburgh, Buffalo and common points; Cincinnati, Detroit and common points; Chicago and common points; Mississippi River common points; Missouri River common points (as described more fully on pages 2 to 6, inclusive, of east-bound tariff No. 3–B, amendments thereto or superseding issues thereof).

In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyong its own terminal is reserved to initial carrier giving guaranty.

814 The rates named in this tariff will be subject to the general rules and regulations governing the application of rates published in east-bound tariff No. 3–B, which took effect July 16, 1898, amendments thereto or reissues thereof.

Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pacific system), San Francisco, Cal.
E. Hawley, ass't general traffic manager,
So. Pac. Co., New York, N. Y.
A. D. Shepard, general freight agent,
So. Pac. Co. (Pacific system), San Francisco, Cal.
G. W. Luce, ass't gen. freight agent,
So. Pac. Co. (Pacific system), Los Angeles, Cal.
C. W. Bein, traffic manager,
So. Pac. Co. (Atlantic system), New Orleans, La.
W. H. Masters, ass't traffic manager,
So. Pac. Co. (Atlantic system), New Orleans, La.
S. H. Babcock, traffic manager,
R. G. W. R'y, Salt Lake City, Utah.
S. J. Henry, general freight agent,
R. G. W. R'y, Salt Lake City, Utah

W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
W. A. Bissell, ass't traffic manager,
Santa Fe system, San Francisco, Cal.
J. E. Gorman, general freight agent,
A. T. & S. F. R'y, Topeka, Kas.
E. Chambers, general freight agent,
Santa Fe Pacific R. R., S. F. & S. J. V. R'y; and So. Cal.
Los Angeles, Cal.
815 E. L. Sargent, general freight agent,
Texas & Pacific R'y, Dallas, Tex.
J. A. Monroe, freight traffic manager,
Union Pacific R. R., Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal., December 20, 1899.
Issued by R. H. Countiss, agent, 49 Second street, San Franci
Cal.
Sent to I. C. C. 12-21-99. (Auth. 541.)

The through rates provided herein will apply in connection w
the following named roads, the traffic officials of which will cer
their concurrence therein to the Interstate Commerce Commissi

Western Roads.

Atchison, Topeka & Santa Fe R'y.
Burlington & Missouri River R. R. in Nebraska.
Burlington, Cedar Rapids & Northern R'y.
Chicago & Alton R. R.
Chicago & Northwestern R'y.
Chicago, Burlington & Kansas City R'y.
Chicago, Burlington & Quincy R. R.
Chicago Great Western R'y.
Chicago, Milwaukee & St. Paul R'y.
Chicago, Rock Island & Pacific R'y.
Chicago, St. Paul, Minneapolis & Omaha R'y.
Denver & Rio Grande R. R.
Gulf, Colorado & Santa Fe R'y.
816 Hannibal & St. Joseph R. R.
Illinois Central R. R.
Iowa Central R'y.
Kansas City, St. Joseph & Council Bluffs R. R.
Kansas City, Fort Scott & Memphis R. R.
Kansas City, Clinton & Springfield R'y.
Kansas City, Pittsburg & Gulf R. R.
Kansas City & Northern Connecting R. R.
Kansas City & Omaha R'y.
Keokuk & Western R. R.

Los Angeles Terminal R'y.
Minneapolis & St. Louis R. R.
Missouri Pacific R'y.
Missouri, Kansas & Texas R'y.
National City & Otay R'y.
Omaha, Kansas City & Eastern R. R.
Omaha & St. Louis R. R.
Peoria, Decatur & Evansville R'y.
Rio Grande Western R'y.
Rock Island & Peoria R'y.
St. Joseph & Grand Island R'y.
St. Louis & San Francisco R. R.
St. Louis, Iron Mountain & Southern R'y.
St. Louis, Keokuk & Northwestern R. R.
St. Louis, Peoria & Northern R'y.
St. Louis Southwestern R'y system.
San Diego, Cuyamaca & Eastern Ry.
San Diego, Pacific Beach & La Jolla R'y.
San Francisco & San Joaquin Valley R'y.
817 Santa Fe Pacific R. R.
Sioux City & Pacific R. R.
Southern California R'y.
Southern Pacific Co. (Atlantic system).
Southern Pacific Co. (Pacific system).
Texas Midland R. R.
Texas & Pacific R'y.
Union Pacific R. R.
Wabash R. R.
Wisconsin Central lines.

Central Freight Association Territory.

Allegheny Valley R'y.
Alliance & Northern R. R.
Ann Arbor R. R.
Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R'y.
Buffalo & South-Western R. R.
Buffalo, Rochester & Pittsburg R'y.
Chesapeake & Ohio R'y.
Chicago & Eastern Illinois R. R.
Chicago & Erie R. R.
Chicago & Grand Trunk R'y.
Chicago & South-Eastern R'y.
Chicago & West Michigan R'y.
Chicago, Indianapolis & Louisville R'y.
Chicago, Kalamazoo & Saginaw R'y.
Chicago, Peoria & St. Louis R. R.
Cincinnati & Muskingum Valley R'y.

Chicago & Alton R. R.
Chicago & North-Western R'y.
Chicago, Burlington & Kansas City R'y.
800 Chicago, Burlington & Quincy R. R.
Chicago Great Western R'y.
Chicago, Milwaukee & St. Paul R'y.
Chicago, Rock Island & Pacific R'y.
Chicago, St. Paul, Minneapolis & Omaha R'y.
Denver & Rio Grande R. R.
Gulf, Colorado & Santa Fe R'y.
Hannibal & St. Joseph R. R.
Illinois Central R. R.
Iowa Central R'y.
Kansas City, St. Joseph & Council Bluffs R. R.
Kansas City, Fort Scott & Memphis R. R.
Kansas City, Clinton & Springfield R'y.
Kansas City, Pittsburg & Gulf R. R.
Kansas City & Northern Connecting R. R.
Kansas City & Omaha R'y.
Keokuk & Western R. R.
Minneapolis & St. Louis R. R.
Missouri Pacific R'y.
Missouri, Kansas & Texas R'y.
Omaha, Kansas City & Eastern R. R.
Omaha & St. Louis R. R.
Rio Grande Western R'y.
Rock Island & Peoria R'y.
St. Joseph & Grand Island R'y.
St. Louis & San Francisco R. R.
St. Louis, Iron Mountain & Southern R'y.
St. Louis, Keokuk & North-Western R. R.
St. Louis, Peoria & Northern R'y.
801 St. Louis Southwestern R'y system.
San Francisco & San Joaquin Valley R'y.
Santa Fe Pacific R. R.
Southern California R'y.
Southern Pacific Co. (Atlantic system).
Southern Pacific Co. (Pacific system).
Texas Midland R. R.
Texas & Pacific R'y.
Union Pacific R. R.
Wabash R. R.
Wisconsin Central lines.

Central Freight Association Territory.

Allegheny Valley R'y.
Alliance & Northern R. R.
Ann Arbor R. R.

Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R'y.
Buffalo & South-Western R. R.
Buffalo, Rochester & Pittsburg R'y.
Chesapeake & Ohio R'y.
Chicago & Eastern Illinois R. R.
Chicago & Erie R. R.
Chicago & Grand Trunk R'y.
Chicago & South-Eastern R'y.
Chicago & West Michigan R'y.
Chicago, Indianapolis & Louisville R'y.
Chicago, Kalamazoo & Saginaw R'y.
Chicago, Peoria & St. Louis R. R.
Cincinnati & Muskingum Valley R'y.
802 Cincinnati, Hamilton & Dayton R'y.
Cincinnati Northern R. R.
Cincinnati, Portsmouth & Virginia R. R.
Cincinnati, Saginaw & Mackinaw R. R.
Cleveland & Marietta R'y.
Cleveland, Akron & Columbus R'y.
Cleveland, Canton & Southern R. R.
Cleveland, Cincinnati, Chicago & St. Louis R'y.
Cleveland, Lorain & Wheeling R'y.
Cleveland Terminal & Valley R. R.
Columbus, Hocking Valley & Toledo R'y.
Columbus, Sandusky & Hocking R. R.
Detroit & Mackinac R'y.
Detroit, Grand Haven & Milwaukee R'y.
Detroit, Grand Rapids & Western R. R.
Detroit, Toledo & Milwaukee R. R.
Dunkirk, Allegheny Valley & Pittsburg R. R.
Elgin, Joliet & Eastern R'y.
Evansville & Terre Haute R. R.
Findlay, Ft. Wayne & Western R'y.
Flint & Perre Marquette R. R.
Ft. Wayne, Cincinnati & Louisville R. R.
Grand Rapids & Indiana R. R.
Grand Trunk R'y.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Indiana, Decatur & Western R'y.
Jacksonville & St. Louis R'y.
Lake Erie & Western R. R.
803 Lake Shore & Michigan Southern R'y.
Louisville & Nashville R. R.
Louisville, Evansville & St. Louis Consol'd R. R.
Louisville, Henderson & St. Louis R'y.
Lowell & Hastings R. R.
Michigan Central R. R.

New York, Chicago & St. Louis R. R.
New York, Pennsylvania & Ohio R. R.
Norfolk & Western R'y.
Northern Ohio R'y.
Ohio Central lines.
Ohio River R. R.
Ohio River & Lake Erie R. R.
Ohio Southern R. R.
Penna. lines west of Pittsburgh, N. W. system.
Penna. lines west of Pittsburgh, S. W. system.
Pennsylvania R. R.
Peoria & Eastern R'y.
Peoria, Decatur & Evansville R'y.
Pittsburgh & Lake Erie R. R.
Pittsburgh & Western R'y.
Pittsburgh, Bessemer & Lake Erie R. R.
Pittsburgh, Lisbon & Western R'y.
Pontiac, Oxford & Northern R. R.
Saginaw, Tuscola & Huron R. R.
St. Louis, Chicago & St. Paul R. R.
Toledo & Ohio Central Extension R. R.
Toledo, Peoria & Western R'y.
Toledo, Saginaw & Muskegon R'y.
804 Toledo, St. Louis & Kansas City R. R.
Vandalia line.
Wabash R. R.
Western New York & Pennsylvania R'y.
Wheeling & Lake Erie R. R.
Zanesville & Ohio River R. R.

Trunk Line Territory.

Allegheny Valley R'y.
Atlantic City R. R.
Baltimore & Ohio R. R.
Baltimore & Lehigh R. R.
Bangor & Portland R. R.
Bath & Hammondsport R. R.
Beech Creek R. R.
Bradford, Bordell & Kinzua R'y.
Buffalo, Attica & Arcade R. R.
Buffalo, Rochester & Pittsburgh R'y.
Canadian Pacific R'y.
Central New England R'y.
Central New York & Western R'y.
Central R. R. of New Jersey.
Central Vermont R'y.
Chesapeake & Ohio R'y.

Also in connection with
Clyde Steamship Line.
Merchants & Miners Transportation Co.
Old Dominion Steamship Co.
Cornwall & Lebanon R. R.
Cumberland Valley R. R.
805 Delaware & Hudson Canal Co.
Delaware, Lackawanna & Western R. R.
Delaware River R. R.
Erie & Wyoming Valley R. R.
Erie railroad.
Fall Brook R'y.
Gettysburg & Harrisburg R'y.
Grand Trunk R'y.
Kanona & Prattsburg R. R.
Lehigh & Hudson River R'y.
Lehigh & Lackawanna R. R.
Lehigh & New England R. R.
Lehigh Valley R. R.
Monongahela River R. R.
Montrose R'y.
New Jersey & New York R. R.
New York & Greenwood Lake R'y.
New York & Long Branch R. R.
New York Central & Hudson River R. R.
New York, Ontario & Western R'y.
New York, Philadelphia & Norfolk R. R.
New York, Susquehanna & Western R. R.
Norfolk & Western R. R.
Pennsylvania R. R.
Pennsylvania & Northwestern R. R.
Philadelphia & Reading R'y.
Port Jervis, Monticello & New York R. R.
Raritan River R. R.
Richmond, Fredericksburg & Potomac R. R.
806 Rockaway Valley R. R.
Rome, Watertown & Ogdensburg R. R.
South Jersey R. R.
Staten Island Rapid Transit R. R.
Stewartstown R. R.
Tuckerton R. R.
Wallkill Valley R. R.
Western Maryland R. R.
Western New York & Pennsylvania R'y.
West Jersey & Sea Shore R. R.
West Shore R. R.
West Virginia & Pittsburgh R. R.
West Virginia Central & Pittsburgh R'y.
Williamsport & North Branch R. R.

Local Rates, in Cents per Hundred Pounds.

To Roseville, Cal., from

Loomis	4	Newcastle	6
Penryn	4½	Auburn	7
Clipper Gap	9	New England Mills	10
Applegate	9½	Colfax	11

The rate named herein will also apply on the citrus fruits name below:

"Citrus fruits" are the fruits of trees such as the orange, lemo citron, etc., whose leaves do not fall in autumn. The princip "citrus fruits" are, oranges, lemons, limes, mandarines, tangerin citrons and grape fruits.

Mixed Carload Shipments of Citrus and Deciduous Fruits.

828 Citrus and deciduous fruits may be forwarded in mixed ca load lots, at the higher carload rate applying upon eith commodity.

Mixed Carload Shipments of Citrus Fruits and Vegetables.

Citrus fruits and green vegetables may be forwarded in mixe carloads at the highest rate (for the carload) that is provided for a of the commodities shipped in the car.

Also circular, effective January 21, 1902, showing division or pe centage of freight between defendant railroad companies and the eastern connections, now marked Complainant's Exhibit 16:

The document last offered is as follows:

829 I. C. C. No. 203.

Supersedes I. C. C. No. 188.

Supersedes Circular No. 24–C, which Took Effect November 25, 190

Trans-continental Freight Bureau, Representing—

Atchison, Topeka & Santa Fe railway,
Burlington & Mo. River R. R. in Neb.,
Canadian Pacific railway,
Chicago, Rock Island & Pacific railway,
Colorado Midland railway,
Colorado & Southern railway,
Denver & Rio Grande railroad,
El Paso & Northeastern railroad,
El Paso & Northeastern railway,
Great Northern railway,

Minneapolis, St. Paul & Sault Ste. Marie Ry.
Missouri Kansas & Texas railway,
Missouri Pacific railway,
Northern Pacific railway,
Oregon Railroad & Navigation Co.,
Oregon Short Line railroad,
Oregon & California railroad,
Rio Grande Western railway,
St. Louis & San Francisco railroad,
St. Louis, Iron Mountain & Southern Ry.
San Francisco & San Joaquin Valley Ry.
Santa Fe Pacific railroad,
Southern California railway,
Southern Pacific Co., Atlantic system,
Southern Pacific Co., Pacific system,
830 Texas & Pacific railway,
Union Pacific railroad.

Circular No. 24–D. Effective July 21, 1902.

Established Divisions

Applying

East and West-bound, as Provided, from and to Pacific Coast Terminals

and

Lost of Interior Pacific Coast Points

on Traffic

From and to which the same revenue accrues to lines east of Chicago, Mississippi River and Ohio River crossings, as they receive on similar shipments originating at or destined to Pacific Coast terminals.

For territorial boundaries, see territorial description published on introductory pages of Trans-continental Freight Bureau's current tariffs, applying east-bound or west-bound, as the case may be.

W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
W. A. Bissell, asst. traffic manager,
Santa Fe system, San Francisco, Cal.
J. W. Gorman, general freight agent,
A. T. & S. F. R'y, Topeka, Kas.
E. Chambers, general freight agent,
Santa Fe Pacific R. R., S. F. & S. J. V. Ry.,
Los Angeles, Cal.
831 Geo. H. Crosby, general freight agent,
Burlington & Mo. River R. R. in Nebraska, Omaha, Neb.

W. R. MacInnes, asst. frt. traffic manager,
Can. Pac. Ry. (western lines), Winnepeg, Man.
W. B. Bulling, asst. frt. traffic manager,
Can. Pac. Ry. (eastern lines), Montreal, Que.
F. W. Peters, general freight agent,
Can. Pac. Ry., Vancouver, B. C.
H. Gower, asst. freight traffic manager,
C. R. I. & P. R'y., Chicago, Ill.
H. H. Embry, general freight agent,
C. R. I. & P. R'y (lines west of Missouri river), Topeka, Kas
A. N. Brown, general freight agent,
E. P. & N. E. R. R., and E. P. & N. E. Ry.,
El Paso, Tex.
H. C. Bush, traffic manager,
Colo. Mid. R'y., Denver, Colo.
F. D. Hunter, general freight agent,
Colo. Mid. Ry., Denver, Colo.
C. L. Wellington, traffic manager,
Colo. & Sou. Ry., Denver, Colo.
H. A. Johnson, general freight agent,
Colo. & Sou. Ry., Denver, Colo.
W. C. Smith, general traffic manager,
Mo. Pacific R'y., St. Louis, Mo.
J. C. Lincoln, general freight agent,
Mo. Pacific R'y., St. Louis, Mo.
A. S. Hughes, general traffic manager,
D. & R. G. R. R. and R. G. W. R'y.,
Denver, Colo.
832 S. H. Babcock, asst. gen. traffic manager,
D. & R. G. R. R., and R. G. W. R'y.,
Salt Lake City, Utah.
Fred Wild, Jr., general freight agent,
D. & R. G. R. R., and R. G. W. R'y.,
Denver, Colo.
F. B. Clarke, general traffic manager,
Ft. Nor. Ry., St. Paul, Minn.
J. C. Eden, asst. gen. traffic manager,
Gt. Nor. Ry., Seattle, Wash.
G. W. Somers, general freight agent,
Gt. Nor. Ry., St. Paul, Minn.
W. L. Martin, general freight agent,
Minn. St. P. & S. Ste. M. R'y.,
Minneapolis, Minn.
C. Haile, traffic manager,
Mo. Kan. & Tex. R'y., St. Louis, Mo.
W. B. Groseclose, general freight agent,
Mo. Kan. & Tex. R'y., St. Louis, Mo.
S. L. Moore, general freight agent,
Nor. Pac. Ry., St. Paul, Minn.

S. G. Fulton, asst. general freight agent,
Nor. Pac. Ry., Portland, Ore.
H. A. Jones, freight traffic manager,
So. Pac. Co. (Atl. sys.), Houston, Tex.
W. H. Masters, asst. traffic manager,
So. Pac. Co. (Atl. sys.), New Orleans, La.
C. K. Dunlap, general freight agent,
So. Pac. Co. (Atlantic system),
Houston, Tex.
833 Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pacific system and Oregon lines),
San Francisco, Cal.
G. W. Luce, general freight agent,
So. Pac. Co. (Pacific system),
San Francisco, Cal.
W. E. Coman, general freight agent,
So. Pac. Co.'s lines in Oregon,
Portland, Ore.
G. A. Parkyns, asst. general freight agent,
So. Pac. Co. (Pacific system),
Los Angeles, Cal.
J. A. Middleton, general freight agent,
St. L. & S. F. R. R., St. Louis, Mo.
E. L. Sargent, general freight agent,
Texas & Pacific Ry', Dallas, Tex.
R. B. Miller, general freight agent,
Ore. R. R. & Nav. Co., Portland Ore.
T. M. Schumacher, traffic manager,
Oregon Short Line R. R., Salt Lake City, Utah.
J. A. Munroe, traffic manager,
Union Pacific R. R., Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal., July —.
Sent to I. C. C. 7-11-1902.—(Auth. 788.)
Issued by R. H. Countiss, 49 Second street, San Francisco, Cal.

834

Between	And
California terminals	St. Paul, Minneapolis and Minnesota transfer, Minn.,

East and West-bound.

1. By agreement with the Western Freight Association, the following percentages will apply in division of the published tariff rates on traffic between California terminals and St. Paul, Minneapolis and Minnesota transfer, Minn., via Missouri River crossings, Council Bluffs, Ia. to Kansas City, Mo., inclusive:

Via Missouri River Crossings, Council Bluffs, Ia., to Kansas City, Mo., Inclusive.

North of Missouri River crossings..... 12½ per cent. of gross terminal rates.
West of Missouri River crossings..... Remainder of through rates.

Between	And
Portland, East Portland, Albina and Astoria, Ore.	St. Paul, Minneapolis and Minnesota transfer, Minn.,

East and West-bound.

2. The authorized through rates to and from Portland, East Portland, Albina and Astoria, Ore., will apply via Missouri River crossings, subject to the following divisions:

In connection with	To or from
Chicago, Burlington & Quincy,	St. Paul, Minneapolis and Minnesota transfer, Minn.

835

In connection with	To and from
Chicago Great Western Ry.	St. Paul, Minneapolis and Minnesota Transfer, Minn.
Chicago, Wilwaukee & St. Paul Ry.	St. Paul, Minneapolis, Minnesota Transfer, Stillwater, Hopkins Shakopee and Mankato Minn
NOTE.—This arrangement will not apply on traffic on which the Missouri River rates are lower than the Mississippi River basis.	
Chicago, Rock Island & Pacific Ry. and Minneapolis & St. Louis R. R.	St. Paul, Minneapolis and Minnesota Transfer, Minn.

Via Missouri River Crossings, Council Bluffs, Ia., to Kansas City, Mo., Inclusive.

North of Missouri River crossings..... 12½ per cent. of the gross terminal rates.
West of Missouri River crossings..... Remainder of through rates.

St. Louis and Common Points.

3. Via Missouri River Common Points: Kansas City, Mo., to Council Bluffs, Iowa, or Omaha, Neb., Inclusive.

East and West-bound.

(St. Louis Divisions.)

East of Missouri river	11 per cent. of gross through rates.
West of Missouri river	Remainder of gross through rates.

East and West-bound.

(East St. Louis Divisions.)

836 4. On business originating at, or destined to, or passing through points common with St. Louis, which are located east of the Mississippi river, first deduct 2 cents per 100 lbs. transfer from through rate, or proportion applying west of such common points, and take 11 per cent. of the remainder, plus 2 cents per 100 lbs. transfer, as the proportion applying east of the Missouri river; remainder applies west thereof.

Mississippi River Transfers.

The transfer charge at all Mississippi River crossings, as far north as and including Dubuque, Iowa, will be two cents per 100 lbs., regardless of classification or quantity (except as noted below), on all shipments of freight between Pacific Coast points and points east of the Mississippi river, contingent on the revenue accruing to the lines west of the Missouri river not being less than accrues on a similar shipment from the same point to the same destination, when forwarded via East St. Louis bridge. No deduction from the through rates, account of such transfers, in excess of the above amount, will be allowed.

Exceptions.

Live stock (regardless of length of car), per car	$2.00
Locomotives, on their own wheels, each	15.00
Passenger and sleeping coaches, on their own wheels, each	6.00
Freight cars, box or flat, on their own wheels, each	2.00
Baggage, mail or express cars, on their own wheels, each	4.00
Caboose or way cars, on their own wheels, each	3.00

Chicago and Common Points.

Exception.—Chicago and common points divisions will not apply to or from stations on or reached via Wisconsin Central Ry.

837 Via Missouri River Common Points: Kansas City, Mo., to Council Bluffs, Iowa, or Omaha, Neb., Inclusive.

East and West-bound.

(Chicago Divisions.)

5. Deduct 5 cents per 100 lbs. from through rate or proportion applying west of Chicago and common points, and take 15 per cent. of remainder as applying east of Missouri river; remainder of through rate or proportion applies west of Missouri river, except when routed via Omaha or Columbus, deduct 5 cents per 100 lbs. from proportion applying west of Missouri river and add to proportion applying east thereof.

NOTE 1.—On traffic originating at or destined to points east of Chicago and common points territory, routed via Chicago (or Chicago Junction points), Peoria, Pekin or Bloomington and East St. Louis or Cairo, the Southern Pacific Co., and Santa Fe system demand the same revenue as accrues to them on traffic routed via East St. Louis or Cairo direct.

NOTE 2.—Percentage, via East St. Louis or Cairo, shown below will apply only when business is routed west of St. Louis or Cairo via St. Louis, Iron Mountain & Southern R'y (via Texarkana, Tex.), St. Louis & San Francisco R. R. (via Paris, Tex., or Burrton, Kan.) or Missouri, Kansas & Texas R'y (via Ft. Worth or Denison, Tex. and Sedalia, Mo.)

East and West-bound.

6. North of East St. Louis or Cairo..... 11 per cent. of through rate
West of East St. Louis or Cairo..... Remainder of through rate

838 Business routed via Missouri River common points will be allowed "Chicago divisions" ONLY, as per formula No. 5 via Missouri river.

Via East Hannibal, Ill.

NOTE.—On traffic originating at or destined to points east of Chicago and common points territory, routed via Chicago (or Chicago Junction points) and east Hannibal, the Southern Pacific Co. demands the same revenue as accrues to it on traffic routed via East Hannibal direct.

When routed west thereof via Missouri, Kansas & Texas R'y (via Fort Worth or Denison and Sedalia).

East and West-bound.

7. East of East Hannibal..... 9 per cent. of through rate
West of East Hannibal..... Remainder of through rate

Business routed via Missouri River common points will be allowed "Chicago divisions" ONLY as per formula No. 5, via Missouri river

Via Missouri River.

When from Points East of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka, or Crandall, Ill., on Traffic Routed via Those Points.

West-bound.

8. On business routed via Missouri River points, deduct 5 cents per 100 lbs. from proportion of through rate applying west of Peoria, Bloomington, Pekin, Morton, Eureka or Crandall, and take 13 per cent. of remainder as applying east of Missouri river. Remainder of rate applies west of Missouri river.

839 NOTE.—Business originating at Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, will be subject to Chicago and common points rates, and divisions as per formula No. 5.

East Bound.

Sub-divisions of Proportions of Through Rates Accruing West of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, Ill., on Business Destined to Points East Thereof.

9. Sub-division of the proportion of through rates accruing west of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, Ill., on business detined to Cincinnati-Detroit common points, Pittsburgh-Buffalo common points and New York, Boston and common points, when routed via Missouri River points, will be on the following basis, viz: East of Missouri river 11 per cent. of proportion applying west of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, Ill., plus 2 cents per hundred pounds transfer; transfer to be deducted before prorating. Remainder of through rates after deducting proportion accruing east of Missouri river will apply west of Missouri river.

Via New Orleans, La.

When Routed via the Illinois Central Railroad.

East and West-bound.

10. When to or from San Francisco, deduct 10 cents per 100 lbs., for transfers (viz: 2 cents for Cairo, 3 cents for New Orleans; balance west of New Orleans.

840 11. When to or from other California terminals, deduct 5 cents per 100 lbs. for transfers (viz: 2 cents for Cairo and 3 cents for New Orleans), and take 24 3/10 per cent. of remainder, plus 2 cents, as applying north of New Orleans; balance applies west of New Orleans.

Cincinnati, Hamilton & Dayton R'y.
818 Cincinnati Northern R. R.
Cincinnati, Portsmouth & Virginia R. R.
Cincinnati, Saginaw & Mackinaw R. R.
Cleveland & Marietta R'y.
Cleveland, Akron & Columbus R'y.
Cleveland, Canton & Southern R. R.
Cleveland, Cincinnati, Chicago & St. Louis R'y.
Cleveland, Lorain & Wheeling R'y.
Cleveland Terminal & Valley R. R.
Columbus, Hocking Valley & Toledo R'y.
Columbus, Sandusky & Hocking R. R.
Detroit & Mac-inac R'y.
Detroit, Grand Haven & Milwaukee R'y.
Detroit, Grand Rapids & Western R. R.
Detroit, Toledo & Milwaukee R. R.
Dunkirk, Allegheny Valley & Pittsburg R. R.
Elgin, Joliet & Eastern R'y.
Evansville & Terre Haute R. R.
Findlay, Ft. Wayne & Western R'y.
Flint & Perre Marquette R. R.
Ft. Wayne, Cincinnati & Louisville R. R.
Grand Rapids & Indiana R. R.
Grand Trunk R'y.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Indiana, Decatur & Western R'y.
Jacksonville & St. Louis R'y.
Lake Erie & Western R. R.
Lake Shore & Michigan Southern R'y.
819 Louisville & Nashville R. R.
Louisville, Evansville & St. Louis Consol'd R. R.
Louisville, Henderson & St. Louis R'y.
Lowell & Hastings R. R.
Michigan Central R. R.
New York, Chicago & St. Louis R. R.
New York, Pennsylvania & Ohio R. R.
Norfolk & Western R'y.
Northern Ohio R'y.
Ohio Central lines.
Ohio River R. R.
Ohio River & Lake Erie R. R.
Ohio Southern R. R.
Penna. lines west of Pittsburgh, N. W. system.
Penna. lines west of Pittsburgh, S. W. system.
Pennsylvania R. R.
Peoria & Eastern R'y.
Peoria, Decatur & Evansville R'y.
Pittsburgh & Lake Erie R. R.

Pittsburgh & Western R'y.
Pittsburgh, Bessemer & Lake Erie R. R.
Pittsburgh, Lisbon & Western R'y.
Pontiac, Oxford & Northern R. R.
Saginaw, Tuscola & Huron R. R.
St. Louis, Chicago & St. Paul R. R.
Toledo & Ohio Central Extension R. R.
Toledo, Peoria & Western R'y.
Toledo, Saginaw & Muskegon R'y.
Toledo, St. Louis & Kansas City R. R.
820 Vandalia line.
Wabash R. R.
Western New York & Pennsylvania R'y.
Wheeling & Lake Erie R. R.
Zanesville & Ohio River R. R.

Trunk Line Territory.

Allegheny Valley R'y.
Atlantic City R. R.
Baltimore & Ohio R. R.
Baltimore & Lehigh R. R.
Bangor & Portland R. R.
Bath & Hammondsport R. R.
Beech Creek R. R.
Bradford, Bordell & Kinzua R'y.
Buffalo, Attica & Arcade R. R.
Buffalo, Rochester & Pittsburgh R'y.
Canadian Pacific R'y.
Central New England R'y.
Central New York & Western R'y.
Central R. R. of New Jersey.
Central Vermont R'y.
Chesapeake & Ohio R'y.
Also in connection with
Clyde Steamship Line.
Merchants and Miners Transportation Co.
Old Dominion Steamship Co.
Cornwall & Lebanon R. R.
Cumberland Valley R. R.
Delaware & Hudson Canal Co.
Delaware & Lackawanna Western R. R.
Delaware River R. R.
Erie & Wyoming Valley R. R.
Erie railroad.
Fall Brook R'y.
Gettysburg & Harrisburg R'y.
Grand Trunk R'y.
821 Kanona & Prat-sburg R. R.
Lehigh & Hudson River R'y.

Lehigh & Lackawanna R. R.
Lehigh & New England R. R.
Lehigh Valley R. R.
Monongahela River R. R.
Montrose R'y.
New Jersey & New York R. R.
New York & Greenwood Lake R'y.
New York & Long Branch R. R.
New York Central & Hudson River R. R.
New York, Ontario & Western R'y.
New York, Philadelphia & Norfolk R. R.
New York, Susquehanna & Western R. R.
Norfolk & Western R'y.
Pennsylvania R. R.
Pennsylvania & Northwestern R. R.
Philadelphia & Reading R'y.
Port Jervis, Monticello & New York R. R.
Raritan River R. R.
Richmond, Fredericksburg & Potomac R. R.
Rockaway Valley R. R.
Rome, Watertown & Ogdensburg R. R.
South Jersey R. R.
Staten Island Rapid Transit R. R.
Stewartstown R. R.
Tuckerton R. R.
Wallkill Valley R. R.
Western Maryland R. R.
822 Western New York & Pennsylvania R'y.
West Jersey & Seashore R. R.
West Shore R. R.
West Virginia & Pittsburgh R. R.
West Virginia Central & Pittsburgh R'y.
Williamsport & North Branch R. R.
Williams Valley R. R.
Wilmington & Northern R. R.
York Southern R. R.

New England Roads.

Bennington & Rutland R'y.
Boston & Albany R. R.
Boston & Maine R. R.
Central New England R'y.
Central Vermont R'y.
Fitchburg R. R.
Grand Trunk R'y.
Maine Central R. R. (White Mountain div.)
Montpelier & Wells River R. R.
New England R. R.

New York, New Haven & Hartford R. R. (New Haven system).
New York, New Haven & Hartford R. R. (Old Colony system).
Portland & Rochester R. R.
Rutland R. R.
St. Johnsbury & Lake Champlain R. R.

Southeastern Common Points.

(For application of rates to southeastern common points see page 6 of east-bound tariff No. 3–B.)

823 Alabama Midland R'y Co.
Atlanta & West Point R. R. Co.
Atlanta, Knoxville & Northern R'y Co.
Atlantic Coast Line.
Baltimore, Chesapeake & Richmond St'mb't Co.
Brunswick & Western R. R. Co.
Cape Fear & Yadkin Valley R'y.
Central of Georgia R'y Co.
Charleston & Savannah R'y Co.
Charleston & Western Carolina R'y.
Columbus, Newberry & Laurens R. R.
Columbus Southern R'y Co.
East & West R. R. Co.
Florida Central & Peninsular R. R. Co.
Georgia R. R. Co.
Georgia & Alabama R'y Co.
Georgia Southern & Florida R'y Co.
Merchants & Miners Transportation Co.
New York & Texas Steamship Co.
Norfolk & Western R'y.
Ocean Steamship Co. of Savannah.
Old Dominion Steamship Co.
Plant system.
Savannah, Florida & Western R'y Co.
Seaboard Air Line.
Southern Railway Co.
Western & Atlantic Railroad Co.
Western Railway Co. of Alabama.
Wilmington & Weldon R. R. Co.

824 Also

Chattanooga, Rome & Southern R. R.
Illinois Central R. R.
Kansas City, Memphis & Birmingham R. R.
Louisville & Nashville R. R.
Memphis & Charleston R. R.
Nashville, Chattanooga & St. Louis R'y.
Queen & Crescent route:
Cincinnati, New Orleans & Texas Pacific R'y.
New Orleans & North-Eastern R. R.
Alabama Great Southern R. R.

Oranges and lemons in packages or in cars having fixed or transient crates for same, O. R. weather, decay, shortage, and delay, prepaid or guaranteed, at estimated weights shown below, in carloads, minimum weight, 26,000 lbs.

Estimated Weights.

Oranges—72 pounds per box, when in standard size boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where oranges are packed, 11½ by 11½ by 24 inches).

Lemons—84 pounds per box of standard size, outside measurement 11 by 14½ by 27 inches.

If boxes of irregular sizes are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.

From

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), San Jose, Los Angeles, San Diego, and National City, Cal.,
825 Portland, East Portland, and Albina, Ore., and "Intermediate points" as shown in circular No. 16–A, amendments thereto or reissues thereof.

To	Rate.
* Missouri River common points..... * Mississippi River common points..... * Chicago and common points..... * Cincinnati, Detroit and common points..... * Pittsburg, Buffalo and common points..... * New York, Boston and common points.....	$1.25 per 100 lbs.

* As described on pages 2 to 6, inclusive, of east-bound tariff No. 3–B (I. C. C. No. 97), amendments thereto, or superseding issues thereof.

In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guaranty.

The rate named above will also apply:

Via Southern Pacific Co. or Santa Fe system:

From all points on the Los Angeles Terminal railway;

From stations on the Oroville branch of the Southern Pacific Company (Pacific system).

Via Southern Pacific Co. only:

From stations on the Ventura branch of the Southern Pacific Company (Pacific system), including points on Montalvo extension, viz: Oxnard, Somis, Cal., and points between.

826 Via Santa Fe system only :

From all points on the National City & Otay railway, San Diego, Pacific Beach & La Jolla railway and San Diego, Cuyamaca & Eastern railway.

From all points on the Southern California R'y, south of Aliso, Cal.

Rate from Points East of Sacramento, via El Paso or Mojave.

The rate named herein will apply via Southern Pacific Co. (Pacific system), from

Loomis	Cal.	Newcastle	Cal.
Penryn	"	Auburn	"
Clipper Gap	"	New England Mills	Cal.
Applegate	"	Colfax	"

Via El Paso, Tex., in connection with
- Atchison, Topeka & Santa Fe R'y, in connection with G. C. & S. F. R'y, (via Ft. Worth, Tex.)
- Chicago, Rock Island & Pacific R'y,
- Chicago, Rock Island & Texas R'y,
- Gulf, Colorado & Santa Fe R'y, via Ft. Worth, Tex.
- Kansas City, Pittsburg & Gulf R. R.,
- Missouri, Kansas & Texas R'y,
- Missouri Pacific R'y,
- St. Louis & San Francisco R. R.,
- St. Louis, Iron Mountain & Southern R'y
- St. Louis Southwestern R'y,
- Southern Pacific Co., (Atlantic system),
- Texas & Pacific R'y,

And their connections.

Via Mojave, Cal., in connection with
- Atchison, Topeka & Santa Fe R'y,
- Santa Fe Pacific R. R.,

And their connections.

827 Divisions.

In division, local rate from point of shipment to Roseville, Cal., as shown below, first to be deducted, remainder to be divided on basis of established divisions.

On shipments destined to points east of the Mississippi River common points territory, via a direct line to St. Louis, lines east of St. Louis or Mississippi River crossings, should be allowed their regular proportion of terminal rate.

On traffic moving via Missouri River crossings, Sioux City, Iowa, to Kansas City, Mo., inclusive, lines east of Missouri river should be allowed their regular proportion of terminal rate.

Idaho; also including stations Mullan to Burke and Mission, Idaho, inclusive.

Oregon Railroad & Navigation Co.

Washington & Columbia River R'y and Spokane Falls & Northern R'y.

Deduct $10.00 per car from through rate from originating point, and take 15 per cent. of remainder as proportion south of St. Paul, Minneapolis or Minnesota transfer; balance of through rate accrues to line west of St. Paul, Minneapolis or Minnesota transfer.

849 Divisions on Live Stock, in Carloads, via Union Pacific R. R., via Missouri River Crossings.

On live stock, in carloads, from points in Idaho, Washington, and Oregon on line of Oregon Railroad & Navigation Co.

Destined to—	Divisions.
33. Chicago and common points...	Deduct $10.00 per car from through rate from originating point. Allow lines east of Missouri river 15 per cent. or remainder.
34. East Mississippi River crossings.	Deduct $4.00 per car from through rate from originating point. Allow lines east of Missouri river 11 per cent. of remainder, plus $4.00.
35. Mississippi River points other then East Mississippi River crossings.	Allow lines east of Missouri river 11 per cent. of gross through rate.
36. St. Paul, Minneapolis and Minnesota transfer, Minn., via Missouri River crossings, Kansas City, Mo., to Council Bluffs, Ia., inclusive.	Allow lines north of Missouri River crossings 12½ per cent. of through rate from point of origin.

850 Divisions to and from Stations on Chicago & Northwestern R'y in Connection with Minneapolis, St. Paul & Sault Ste. Marie R'y and Canadian Pacific R'y.

To and from Chicago & Northwestern R'y stations, viz.:	South of gateways specified below.	Proportion.
37. All stations in Illinois, points in Wisconsin south of and including Green Bay and New London, Wis., and West Salem, Wis.	South of St. Paul, Minn.	Fifteen (15) per cent. of the through rate applying from or to Pacific Coast terminals, after deducting 5 cents per 100 lbs.
38. All stations north of New London, Wis., on the Ashland division.	South of Rhinelander, Wis.	Ten (10) per cent. of the through rates applying from or to Pacific Coast terminals, after deducting 5 cents per 100 lbs.
39. All stations north of Green Bay, Wis., except on the Ashland division.	South of Hermansville, Wis.	Ten (10) per cent. of the through rates applying from or to Pacific Coast terminals, after deducting 5 cents per 100 lbs.
851 40. All other stations.....	South of Oakes, N. D.	Twenty (20) per cent. of the through rates applying from or to Pacific Coast terminals, after deducting 5 cents per 100 lbs.

Agreed divisions with Central Freight Association comprising
Ann Arbor R. R.
Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R. R.
Bessemer & Lake Erie R. R.
Buffalo, Rochester & Pittsburgh Ry.
Chesapeake & Ohio Ry.
Chicago & Eastern Illinois R. R.
Chicago & Erie R. R.
Chicago & South-eastern Ry.
Chicago, Indianapolis & Louisville Ry.
Chicago, Kalamazoo & Saginaw Ry.
Chicago, Peoria & St. Louis Ry. of Illinois.
Cincinnati & Muskingum Valley R. R.
852 Chicago, Hamilton & Dayton Ry.
Cincinnati Northern R. R.
Cleveland, Akron & Columbus Ry.
Cleveland, Cincinnati, Chicago & St. Louis Ry.
Columbus, Sandusky & Hocking R. R.
Detroit Southern R. R.

Dunkirk, Allegheny Valley & Pittsburgh R. R.
Elgin, Joliet & Eastern Ry.
Evansville & Terre Haute R. R.
Findlay, Ft. Wayne & Western Ry.
Ft. Wayne, Cincinnati & Louisville R. R.
Grand Rapids & Indiana Ry.
Grand Trunk Railway System:
Cincinnati, Saginaw & Mackinaw R. R.
Detroit, Grand Haven & Milwaukee Ry.
Grank Trunk Ry.
Grand Trunk Western Ry.
Toledo, Saginaw & Muskegon Ry.
Hocking Valley Ry.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Indiana, Decatur & Western Ry.
Jacksonville & St. Louis Ry.
Lake Erie & Western R. R.
Lake Erie, Alliance & Wheeling R. R.
Lake Shore & Michigan Southern Ry.
Louisville & Nashville R. R.
Louisville, Henderson & St. Louis Ry.
Marietta, Columbus & Cleveland R. R.
853 Michigan Central R. R.
New York, Chicago & St. Louis R. R.
Norfolk & Western Ry.
Northern Ohio Ry.
Ohio Central Lines.
Penna. Lines west of Pittsburgh, N. W. system.
Penna. Lines west of Pittsburg S. W. system.
Pennsylvania R. R.
Pere Marquette R. R.
Pittsburgh & Lake Erie R. R.
Pittsburgh, Lisbon & Western Ry.
Pontiac, Oxford & Northern R. R.
Southern Ry.
Toledo, Peoria & Western Ry.
Toledo, St. Louis & Western R. R.
Vandalia line.
Wabash R. R.
Wheeling & Lake Erie R. R.

East-bound and West-bound.

In division of the published through rates to and from Central Freight Association territory, the above-named roads will be allowed east of the gateway junctions specified, the proportions hereinafter shown of the through rates applying from or to Pacific Coast terminals.

SPECIAL NOTE.—The local rate (class or commodity, whichever is lower) shall in all cases be the maximum proportion to lines either east or west of the western junction points named, and in the
854 application of local rates as maximum the integrity of the through rate shall be fully maintained by the delivering line.

NOTE.—The same revenue accrues to the lines east of Chicago, Mississippi River and Ohio River crossings on shipments from and to interior Pacific Coast points (where through rate is based on terminal rate plus local to or from the nearest terminal), as they receive on similar shipments originating at or destined to Pacific Coast "Terminal" points. For list of the interior Pacific Coast points included in this arrangement see page 18 hereof.

Central Freight Association Limits.

Cincinnati-Detroit District.

Cincinnati, Detroit and common points rates will apply to and from Cincinnati-Detroit district, as described below:

Northern boundary.—(See † note below.) Including points located on a line beginning at Muskegon, Mich.; thence via Toledo, Saginaw & Muskegon R'y, through Sparta, Cedar Springs and Greenville to Sheridan, Mich.; thence via Pere Marquette R. R., north through Edmore, Alma and St. Louis to Saginaw, Mich.; thence via Michigan Central R. R., north to West Bay City, Mich.; thence via Michigan Central R. R., south to Vassar, Mich. thence via Pere Marquette R. R., to Port Huron, Mich.; thence via Grand Trunk Western R'y to Fort Gratiot, Mich.

†NOTE.—Stations on Pere Marquette R. R. north of Muskegon to Pentwater, Mich., inclusive, will be included in Cincinnati-Detroit district.

Eastern boundary.—Including points located on a line be-
855 ginning at Fort Gratiot, Mich.; thence via Grand Trunk R'y to Detroit, Mich.; thence via Michigan Central R. R. to Toledo, Ohio; thence via Wheeling & Lake Erie R. R. through Oak Harbor to Fremont, Ohio; thence via Lake Erie & Western R. R. to Burgeon, Ohio; thence via Pennsylvania Co. through Linden to Tiffin, Ohio; thence via the Sandusky division of Cleveland, Cincinnati, Chicago & St. Louis R'y through Carey, Forest, Kenton, Bellefontaine, Urbana, to Springfield, Ohio; thence via Pittsburgh, Cincinnati, Chicago & St. Louis R'y through Zenia, Morrow, Loveland to Cincinnati, Ohio.

Southern boundary.—From Cincinnati, Ohio, following the course of the Ohio river (including Louisville, Ky.) to but not including Evansville, Ind.

Western boundary.—(See * note below.) Commencing at Chicago, thence following west shore of Lake Michigan, to eastern boundary

line of State of Illinois; thence via said boundary line to Vincennes, Ind.; thence via Evansville & Terre Haute R. R. through Princeton to Evansville, Ind.

* NOTE.—Points located directly on the western boundary above described, also Whiting, East Chicago and Hammond, Ind., and intermediate points west thereof will not be included in Cincinnati-Detroit district.

41. † East of Mackinaw City or Sault Ste. Marie, Mich. ..... 12 per cent. of through rate.

† NOTE.—Will only apply to and from North Pacific Coast terminals and only when routed via Canadian Pacific R'y, Great Northern R'y, Northern Pacific R'y, or Oregon Railroad & Navigation Co. (via Spokane or Wallula, Wash.)

42. East of Chicago, Dwight, Joliet, Kankakee, Seneca, Streator, Ill. — 12 per cent. of through rate.

856

43. East of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, Ill. — 15½ per cent. of through rate.

44. *East of East St. Louis, Cairo, Wann, Alton, East Hannibal, Beardstown, Ashland, Ill. — 15½ per cent. of through rate.

* NOTE.—Will not apply east of East St. Louis, Wann, Alton and East Hannibal, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria, or Beardstown, Ill.

Central Freight Association Limits—Continued.

Points North of Northern Boundary—Cincinnati-Detroit District.

East and West Bound.

Cincinnati, Detroit and common points rates will also apply to and from the following points in the State of Michigan, north of the northern boundary line of the Central Freight Association's limits, as defined on preceding page, subject to agreed divisions as noted below:

Pere Marquette Railroad.

Stations east of Berry to Big Rapids, inclusive.
Stations north of Sparta to Petoskey, inclusive.
Stations north of Greenville to Howard City, inclusive.
Stations west of Edmore to Howard City, inclusive.
Stations north of Edmore to Big Rapids, inclusive, including Chippewa Lake, Mecosta and Remus branches.

857

Grand Rapids & Indiana Railroad.

All stations north of Cedar Springs (including Boyne City, Mich., on Boyne City & Southeastern R. R.).

The following percentage proportions of the through rates applying from or to Pacific Coast termin*las*, but not to exceed the current local rates east of the gateway junctions specified, will be allowed:

45. East of Chicago, Dwight, Joliet, Kankakee, Seneca, Streator, Ill..... 15 per cent.
46. East of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, Ill..... ..... 18½ per cent.
47. *East of East St. Louis, Cairo, Wann, Alton East Hannibal, Beardstown, Ashland, Ill..... 18½ per cent.

* NOTE.—Will not apply east of East St. Louis, Wann, Alton, and East Hannibal, Ill., in connection with Chicago, Burlington & Quincy R'y, on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

The following arrangements will apply only on traffic to North Pacific Coast terminals and only when routed in connection with Canadian Pacific R'y, Great Northern R'y, Northern Pacific R'y or Oregon Railroad & Navigation Co. (via Huntington, Spokane or Wallula Jct.), and their eastern connections. They will not apply via the lines of the Santa Fe system (via Albuquerque, N. M.), nor via the lines of the Southern Pacific Co. (Pacific system).

48. From points in Michigan on Michigan Central R. R., Pere Marquette R. R., and Grand Rapids & Indiana R'y, when
858 routed via Mackinaw City, Mich., the same rates and divisions will apply as apply from Detroit, via Chicago.
49. From points on the Ann Arbor railroad, when routed via Gladstone, Mich., or Kewaunee, Wis., the same rates and divisions will apply as apply from Detroit, via Chicago.

Via Manitowoc or Milwaukee, Wis., in Connection with Car Ferry Lines.

East and West Bound.

In division of the authorized through rates in connection with car ferry lines, to and from the following described points, the proportions shown below of the through rates applying from or to Pacific Coast terminals will be allowed lines east of Manitowoc or Milwaukee, but not to exceed the current local rates east of Manitowoc or Milwaukee.

These arrangements are conditioned on shipments being handled in original cars, without breaking bulk, and they will apply—

Via Ogden, Utah, Huntington, Ore., Barstow, Mojave or Bakers-

field, Cal., or El Paso, Tex. (via "El Paso-Rock Island route" only), in connection with

Atchison, Topeka & Santa Fe R'y,
Burlington & Missouri River R. R. in Neb.,
Chicago & North-western R'y,
Chicago Great Western R'y,
Chicago, Milwaukee & St. Paul R'y,
Chicago, Rock Island & Pacific R'y,
Colorado Midland R'y,
Colorado & Southern R'y,
859 Denver & Rio Grande R. R.,
Missouri Pacific R'y,
Oregon R. R. & Navigation Co.,
Oregon Short Line R. R.,
Rio Grande Western R'y,
Santa Fe Pacific R. R. (via Barstow, Mojave or Bakersfield),
San Francisco & San Joaquin Valley R'y (via Bakersfield),
Southern California R'y (via Barstow),
Southern Pacific Co. (Pac. Sys.) (via Ogden, Mojave, or El Paso),
Union Pacific R. R.,
Wisconsin Central R'y (in connection with Chicago, Rock Island & Pacific R'y or Santa Fe System).

Via St. Paul, Minneapolis or Minnesota transfer in connection with

Canadian Pacific R'y,
Chicago & North-western R'y,
Chicago, Milwaukee & St. Paul R'y,
Great Northern R'y,
Minneapolis, St. Paul & Sault Ste. Marie R'y,
Northern Pacific R'y,
Oregon Railroad & Navigation Co.,
Wisconsin Central R'y.

SPECIAL NOTE.—In the application of local rates as maximum the integrity of the through rate shall be fully maintained by the delivering line.

Ann Arbor R. R.: (via Frankfort, Mich., and Manitowoc, Wis.)
All stations.

Pere Marquette railroad: (via Ludington, Mich., and Milwaukee or Manitowoc, Wis.)
860 All stations (except points on Port Austin division, points on Saginaw, Tuscola & Huron R. R., east of Reese, Mich., and points provided for in formula 51).

50. East of Manitowoc or Milwaukee, Wis. 12 per cent. of through rate.

Central Freight Association Limits—Continued.

Perre Marquette Railroad (via Ludington, Mich., and Milwaukee of Manitowoc, Wis.).

Stations east of Berry to Big Rapids, inclusive.
Stations north of Sparta to Petoskey, inclusive.
Stations north of Greenville to Howard City, inclusive.
Stations west of Edmore to Howard City, inclusive.
Stations north of Edmore to Big Rapids, inclusive, (including Chippewa Lake, Mecosta and Remus branches).

51. East of Milwaukee, Wis.. 15 per cent. of through rate.

52. Sub-division of the revenue accruing west of Manitowoc or Milwaukee, when routed via Missouri River gateways, will be on basis of regular "Chicago divisions," viz: East of Missouri river, 15 per cent. of proportion of rate applying west of Manitowoc or Milwaukee; 5 cents per 100 pounds to be deducted before prorating.

53. Sub-division of the revenue accruing west of Manitowoc or Milwaukee, on business originating at or destined to Portland, East Portland, Albina and Astoria, Ore., or points north thereof, when routed via St. Paul, Minneapolis or Minnesota transfer, in connection with Canadian Pacific R'y, Great Northern R'y, or Northern Pacific R'y, will be on the following basis, viz: East of St. Paul, Minneapolis or Minnesota transfer, 15 per cent. of proportion of rate applying west of Manitowoc or Milwaukee; 5 cents per 100 pounds to be deducted before prorating.

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Pittsburgh-Buffalo District.

Pittsburgh, Buffalo and common points rates will apply to and from Pittsburgh-Buffalo district, as described below:

East-bound and West-bound.

Northern boundary.—Including points located on a line beginning at Fort Gratiot, Mich., thence via Grand Trunk R'y to Toronto, Canada, except that northern boundary for west-bound traffic routed in connection with Great Northern R'y and Northern Pacific R'y will be from Fort Gratiot, Mich., via south shore of Lake Erie to International and Suspension bridges.

Eastern boundary.—(See † note below.) Including points located on a line beginning at Toronto, Canada, thence in a southerly direction through Hamilton, International and Suspension bridges, Buffalo, Salamanca, N. Y., to Oil City, Pa.; thence via Allegheny river to Franklin, Pa.; thence via an imaginary line immediately west of the Allegheny river, to Butler, Pa.; thence via Pittsburgh & Western R. R. to Allegheny, Pa.; thence to Pittsburgh, Pa. (including Ben Venue, Shadyside, East Liberty, East Liberty stock yards, Fifth avenue and Dallas, Pa., on Pittsburgh division, Pennsylvania

Agreed Divisions.

Sith

Baltimore & Ohio Southwestern R. R.,
Cleveland, Cincinnati, Chicago & St. Louis R'y,
Lake Erie & Western R. R.,
Louisville & Nashville R. R.,
Illinois Central R. R.,
Illinois Southern R'y,
Southern R'y,
Terre Haute & Indianapolis R. R. (Vandalia line),
Toledo, St. Louis & Western R. R.,
Wabash R. R.

Applying to and from

Vincennes, Evansville, Ind.; Chester, Danville, Metropolis, Salem, Ill.; Henderson, Paducah, Ks., and Intermediate Points.

The published through rates on trans-continental traffic to and from the points described below, via the routes specified, will divide as follows:

841 To and from—	Agreed divisions.	
	East of gateways specified below.	Proportion.
12. Baltimore & Ohio Southwestern R. R., via East St. Louis:		
Vincennes, Ind., and intermediate stations.	East of East St. Louis.	
13. Cleveland, Cincinnati, Chicago & St. Louis R'y, via Peoria or Pekin:		
Stations east of Peoria and Pekin to Beckwith, Ill., inclusive (including Danville, Ill.), via East St. Louis:	East of Peoria or Pekin.	Ten (10) per cent. of the through rates applying from or to Pacific Coast terminals, but not to exceed the current local rates.
Stations east of East St. Louis to Vermilion, Ill., inclusive, via Cairo:	East of East St. Louis.	
Stations north of Cairo to Danville, Ill., inclusive (including Vincennes, Ind.) via Peoria, Pekin or East St. Louis:	North of Cairo.	
Stations — Danville, Ill., to St. Francisville, Ill., inclusive (including Vincennes, Ind.)	East of Peoria, Pekin or East St. Louis.	

To and from—	Agreed divisions.	
	East of gateways specified below.	Proportion.
14. Illinois Central R. R. (Peoria, Mattoon & Evansville division), via Pekin or Peoria:		
Henderson, Ky.; Evansville, Ind., and intermediate stations.	South of Pekin of Peoria.	
842		
16. Illinois Southern R'y, via East St. Louis:		
All stations.	East of East St. Louis, in connection with Illinois Central R. R.	
17. Lake Erie & Western R. R., via Peoria:		
Stations east of Peoria to Cheneyville, Ill., inclusive (including Hoopeston, Ill.)	East of Peoria.	
18. Louisville & Nashville R. R., via East St. Louis:		
Henderson, Ky.; Evansville, Ind., and intermediate stations.	East of East St. Louis.	Ten (10) per cent. of the through rates applying from or to Pacific Coast terminals, but not to exceed the current local rates.
19. Southern R'y, via East St. Louis:		
Henderson Ky.; Evansville, Princeton, Vincennes, Ind., and intermediate stations.	East of East St. Louis.	
20. Terre Haute & Indianapolis R. R. (Vandalia line) via East St. Louis:		
Stations east of East St. Louis to Farrington, Ill., inclusive, (including Vandalia and Effingham, Ill.), via Peoria:	East of East St. Louis.	
Stations east of Peoria to Ferrell, Ill., inclusive including Decatur, Ill.)	East of Peoria.	
843		
21. Toledo, St. Louis & Western R. R. via East St. Louis:		
Ridge Farm, Ill., and intermediate stations.	East of East St. Louis.	

To and from—	Agreed divisions.	
	East of gateways specified below.	Proportion.
22. Wabash R. R., via East St. Louis, or via Missouri river: Danville, Tilton, Catlin, Fairmont, Homer, Sidney, and Philo, Ill.	East of East St. Louis, when routed west thereof via Missouri, Kansas & Texas Ry. (via Ft. Worth or Denison and Sedalia), St. Louis, Iron Mountain & Southern Ry. (via Texarkana), or St. Louis & San Francisco R. R. (via Paris, Tex., or Burrton, Kas.).	Ten (10) per cent. of through rates applying from or to Pacific Coast terminals, but not to exceed the current local rates.
	East of Missouri river	Fifteen (15) per cent. of the through rates applying from or to Pacific Coast terminals after deducting 5 cents per 100 lbs.

The following arrangements will apply only on traffic to North Pacific Coast termin*las*, and only when routed in connection with Canadian Pacific R'y, Great Northern R'y, Northern Pacific R'y or Oregon Railroad & Navigation Co. (via Huntington, Spokane
844 or Wallula Jct.) and their eastern connections. They will not apply via the lines of the Santa Fe system (via Albuquerque, N. M.), nor via the lines of the Southern Pacific Co. (Pacific system).

From Evansville, Vincennes, Ind., and intermediate stations, via Evansville & Terre Haute R. R. (in connection with Chicago and Eastern Illinois R. R.):

23. East of East St. Louis, Ill..... 10 per cent.
24. East of Pekin or Peoria, Ill..... 10 per cent.
25. East of Chicago, Ill..... 10 per cent.

—applying—

via St. Paul, Minneapolis or Minnesota transfer, Minn., in connection with

Canadian Pacific railway, Great Northern railway, Northern Pacific railway and Oregon Railroad & Navigation Company (via Spokane or Wallula Junction),

and

Atchison, Topeka & Santa Fe railway,
Chicago & Alton railway,

Chicago & North-western railway,
Chicago, Burlington & Quincy railway,
Chicago, Great Western railway,
Chicago, Milwaukee & St. Paul railway,
Chicago, Peoria & St. Louis railway,
Chicago, Rock Island & Pacific railway,
Chicago, St. Paul, Minneapolis & Omaha Ry.,
Hannibal & St. Joseph railroad,
Illinois Central railroad,
845 Iowa Central railroad,
Kansas City, St. Joseph & Council Bluffs R. R.,
Minneapolis, St. Paul & Sault Ste. Marie Ry.,
Minneapolis & St. Louis railroad,
Missouri, Kansas & Texas railway,
Missouri Pacific railway,
Rock Island & Peoria railway,
Quincy, Omaha & Kansas City R. R.,
St. Louis & San Francisco railroad,
St. Louis, Keokuk & North-western railroad,
Wabash railroad,
Wisconsin Central railway.

East and west bound
from or to
"North Pacific Coast terminals," viz:

Albina, Ore.; Anacorta, Wash.; Astoria, Ore.; Ballard, Blaine, Wash.; East Portland, Ore.; Edmonds, Everett, Fairhaven, Lowell, Mount Vernon, Olympia, Wash.; Portland, Ore.; Seattle, Snohomish, Tacoma, Vancouver, Whatcom, Wooley, Wash., and points taking same rates as provided in current east-bound and west-bound tariffs of the Trans-Continental Freight Bureau;

also applying on
Idaho, Washington, Oregon and British Columbia traffic
as described below.

Chicago and Common Points.

26. On traffic to or from points in Wisconsin, northern Michigan and Illinois, taking Chicago rates (including Hammond, Ind.) deduct 5 cents per 100 lbs. from through rate or proportion
846 applying west of Chicago and common points, and take 15 per cent. of remainder as proportion south of St. Paul, Minneapolis or Minnesota transfer, Minn.; balance of through rate accrues to line west of St. Paul, Minneapolis or Minnesota transfer, Minn.

NOTE.—The above proportions will also apply east of West Superior on traffic to or from Mackinaw City, Sault Ste. Marie, Mich., and points on the Duluth, South Shore & Atlantic R'y taking Chicago rates. Also east of Minnesota transfer on traffic to or from Mackinaw City and Sault Ste. Marie via "Soo line."

Via St. Paul, Minneapolis, and Minnesota Transfer, Minn. Continued.

St. Louis and Common Points.

27. On traffic to or from points in Iowa and Minnesota, north of and including points on the main line of the Illinois Central R. R. between Dubuque and Cherokee, Iowa (latter not inclusive), and south and east of the main line of the Chicago, St. Paul, Minneapolis & Omaha R'y, from St. Paul, Minn., to Sheldon, Iowa, and east of the line of the Illinois Central R. R., Sheldon and Cherokee, Iowa; also points taking Mississippi River common points rates located on or east of the east bank of the Mississippi river south of St. Paul, Minn., to and including East Dubuque, Ill.; also points located on either bank of the Mississippi river south of Dubuque, Iowa, to and including Rock Island, Ill.:

South of St. Paul, Minneapolis, or Minnesota Transfer, Minn..... 11 per cent. of the gross through rate.

West of St. Paul, Minneapolis, or Minnesota Transfer, Minn..... .. Remainder of the through rate.

847 28. On traffic to or from points in Iowa, south of the Illinois Central R. R., Dubuque to Sioux City, Iowa, and east of the line of the Chicago, Milwaukee & St. Paul R'y, Sioux City to Council Bluffs, via Manilla, Iowa, and points in Missouri as far south as the Wabash R. R., St. Louis to Clark, Mo., and the Chicago & Alton R'y, Clark to Independence, Mo. (latter not inclusive); also points taking Mississippi River common points rates located on or east of the east bank of the Mississippi river between East St. Louis, Ill., and East Dubuque, Ill. (latter not inclusive), except points located on either bank of the Mississippi river south of Dubuque, Iowa, to and including Rock Island, Ill.:

Deduct 5 cents per 100 lbs. from through rate or proportion applying west of Mississippi River common points, and take 15 per cent. of remainder as proportion south of St. Paul, Minneapolis or Minnesota transfer, Minn.: remainder of through rate applies west of St. Paul, Minneapolis or Minnesota transfer, Minn.

Missouri River Points.

29. On traffic to or from Missouri River points, Sioux City, Iowa, to Council Bluffs, Iowa, and Omaha, Neb., inclusive; also to or from points in Iowa taking Missouri River common point rates, south and west of and including the line of the Chicago, Milwaukee & St. Paul R'y from Sioux City, Iowa, to Council Bluffs, Iowa, via Manilla, Iowa:

South of St. Paul, Minneapolis or Minneso- transfer, Minn., take 12½ per cent. of gross Missouri River through rates; west of St. Paul Minneapolis or Minnesota transfer, Minn., remainder.

847½ 30. On traffic to or from Missouri River points south of Council Bluffs, Iowa, to Kansas City, Mo., inclusive; also to or from points in Iowa (south of Council Bluffs and on and west of the line of the Kansas City, St. Joseph & Council Bluffs R. R.) and Missouri taking Missouri River common points rates:

Deduct 5 cents per 100 lbs. from through rate applying to or from Missouri River common points, and take 15 per cent. of remainder as proportion south of St. Paul, Minneapolis or Minnesota transfer, Minn.; remainder of through rate applies west of St. Paul, Minneapolis or Minnesota transfer, Minn.

Divisions on Idaho, Washington, Oregon, and British Columbia Traffic.

31. On shipments between Chicago, Peoria, St. Louis and common points and the following described territory, in Idaho, Washington, Oregon, and British Columbia, east of North Pacific Coast terminals, the lines south or east of St. Paul, Minneapolis or Minnesota transfer, Minn., will accept the same revenue as they receive on similar shipments to or from Portland, Ore., with the exception that where the through rates are made on the sum of the local rates, the divisions will be on the same basis:

(*a.*) All points on Canadian Pacific R'y, west of and including Revelstoke, B. C., and Fernie, B. C. (including North Star branch).

(*b.*) All points on the Northern Pacific R'y, main line and branches west of Granite, Idaho; also including stations Mullan to Burke and Mission, Idaho, inclusive.

(*c.*) All points on the Great Northern R'y, west of and including Priest river, Idaho.

848 (*d.*) All points on the Oregon Railroad & Navigation Co., east of North Pacific Coast terminals.

(*e*) All points on the Washington & Columbia River R'y and Spokane Falls & Northern R'y.

(*f.*) All points on Kootenai Valley R'y and Redlington & Nelson R'y (when routed in connection with Great Northern R'y, via Bonner's Ferry, Idaho).

(*g.*) All points on Kootenai lake; also stations on the Kaslo & Slocan R'y, Nelson & Fort Sheppard R'y, Columbia & Red Mountain R'y and Red Mountain R'y.

Divisions on Live Stock, in Carloads, via St. Paul, Minneapolis, or Minnesota Transfer, Minn.

32. On live stock, in carloads, from points in Idaho, Washington and Oregon, on lines named below, to Chicago, Peoria and East St. Louis, Ill., Milwaukee, Wis., and St. Louis, Mo.:

Great Northern R'y west of and including Priest river, Idaho.

Northern Pacific R'y, main line and branches, west of Granite,

Station.	Location (road).
Natrona	Penna
New Eagle	Penna
New Kensington	Penna
New Stanton	Penna
North Bessemer	B & L E
No. Buena Vista	P & L E
North Webster	P & L E
Northwest	Penna
Odell	B & L E
Oliver	Penna
Osceola	B & O
Parnassus	Penna
Parke	P & L E
Paterson	P & L E
Paulton	Penna
Penn	Penna
Peter's creek	Penna
Peterson	Penna
P. McK. & Y transfer	Penna
Pollock	P & L E
Port Perry	B & O P & L E
Port Royal	P & L E
Power's run	Penna
Radebaugh	Penna
Rankin	B & O *B & L E P & L E
Reynoldton	P & L E
Risher	Penna
Riverton	P & L E
Riverview	Penna
Roads	P & L E
Roaring Run	Penna
Rostraver	P & L E
Ross	Penna
Rosston	Penna
Rural Ridge	B & L E
Rye	Penna
869 Salina	Penna
Sandy Creek	Penna
Saltsburg	P & L E
Sarver	Penna
Saxonburg	Penna
Schenley	Penna
Scott Haven	B & O P & L E
Sewickley	B & O
Shafton	Penna
Shaner	B & O
Sheppler	P & L E
Shire Oaks	Penna
Sinns	P & L E
Sligo	Penna
Smithton	B & O P & L E
Springdale	Penna
Spring Hill	Penna
Stewart	Penna
Stringtown	P & L E
Sunnyside	P & L E
Swissvale	Penna
Tarentum	Penna
Taylor	P & L E
Thomson	Penna
Thomson Scales	Penna
Tipple	Penna
Townsend	Penna
Turin	B & L E
Turtle Creek	Penna
Unity	Penna
Vankirk	P & L E
Van Meter	P & L E
Verona	Penna
Wall	Penna
Wallace	P & L E
Walton	Penna
Watson	P & L E
Webster	Penna P & L E
West Columbia	Penna
West Elizabeth	Penna
West Newton	B & O P & L E
White Rock	Penna
Whitsett Jct	P & L E
Wildwood	Penna
Wilkinsburg	Penna
Wilmerding	Penna
Wilson	Penna
Winfield Furnace	Penna
Wylie	Penna
Youngwood	Penna

* Applies only on shipments from Carnegie Steel Co.

870 Points South of Central Freight Association Territory.

East-bound and West-bound.

In division of the published through rates to and from the following described points in West Virginia and Kentucky, the proportions shown below of the through rates applying from and to Pacific Coast terminals will be allowed east of the gateway junctions specified.

(SPECIAL NOTE.—The local rate (class or commodity, whichever is lower), shall in all cases be the maximum proportion to lines either east or west of the western junction points named, and in the application of local rates as maximum the integrity of the through rate shall be fully maintained by the delivering line.

Chesapeake & Ohio R'y.

Stations Kanawha City and Charleston, W. Va., to Fort Thomas, Ky., Inclusive.

65. East of Chicago, Kankakee or Mazon, Ill..... 15 per cent.
66. * East of East St. Louis, Ill..... 18½ per cent.

* NOTE.—Will not apply east of East St. Louis, Ill., in connection with Chicago, Burlington & Quincy Ry., on business through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

67. East of Cincinnati, O., (when routed via New Orleans, La.)..... 13 per cent.
68. East of Louisville, Ky., (when routed via New Orleans, La.)..... 15 per cent.

From Charleston, W. Va.

Via Baltimore & Ohio Southwestern R. R., in Connection with Ohio Central Lines.

69. East of Cincinnati, O., (when routed via New Orleans, La.)..... 13 per cent.

871 Louisville, Henderson & St. Louis R'y.

Via Henderson, Ky., in Connection with Louisville & Nashville R. R.

All Stations East of Henderson, Ky., Including Louisville and Owensboro, Ky., and Stations on the Fordsville Branch.

70. * East of East St. Louis, Ill..... 15½ per cent.

* NOTE.—Will not apply east of East St. Louis, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago and Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

East-bound.

Via Ohio River Gateway when Routed via New Orleans, La.

On business to Central Freight Association territory, the following proportions will be allowed:

SPECIAL NOTE.—The local rate (class or commodity, whichever is lower) shall in all cases be the maximum proportion to lines either east or west of the western junction points named, and in the application of local rates as maximum the integrity of the through rate shall be fully maintained by the delivering line.

Via Cincinnati.

71 (*a*). The division to points between Toledo and Cincinnati and all intermediate points through which Toledo freight passes to Cincinnati is—11 per cent east-bound from Cincinnati.

72 (*b*). To all points north of Toledo and the northern boundary line of the States of Indiana and Ohio between Lakes Michigan and Erie to and including Detroit and east of the agreed territorial line drawn from Toledo to Cincinnati, to and including Suspension Bridge, Niag-ra Falls, Tonawanda, Black Rock, Buffalo, East
872 Buffalo, *Buffalo*, Buffalo Junction, Dunkirk and Salamanca, N. Y.; Erie, Pittsburgh and Allegheny, Pa., Bellaire, Ohio; Wheeling and Parkersburg, W. Va., the division is—13 per cent. east-bound from Cincinnati.

Via Jeffersonville.

73 (*c*). The division to Toledo and points which take Toledo rates on the route from Toledo to Cincinnati, but not including Cincinnati, is—13 per cent. east-bound from Jeffersonville.

74 (*d*). To Cincinnati and points south and west of the line drawn from Toledo to Cincinnati, both these points excluded (example, Indianapolis), the division from Jeffersonville is—11 per cent east-bound from Jeffersonville.

75 (*e*). From Jeffersonville to points included in the Detroit, Pittsburgh, Wheeling and Parkersburg districts, including Buffalo, Suspension Bridge, Niag-ra Falls, Tonawanda, Black Rock, East Buffalo, Buffalo Junction, Dunkirk and Salamanca, N. Y., Erie, Pittsburgh and Allegheny, Pa.; Ballaire, Ohio; Wheeling and Parkersburg, W. Va., the division is—15½ per cent. east-bound from Jeffersonville.

(*f.*) On traffic via Cincinnati or Jeffersonville the territories are to be the same as on business via Chicago and St. Louis, except that the territory north of Toledo, etc., as outlined above, is to be included in the Pittsburgh district whether the traffic passes via Cincinnati or Jeffersonville.

(*g.*) The Trans-continental classification, rates and rules to govern via Cincinnati and Louisville are those in effect via Chicago, East St. Louis and intermediate gateways.

873 West-bound.

Via Ohio River Gateways when Routed via New Orleans, La.

On business from Central Freight Association territory, the following proportions will be allowed:

SPECIAL NOTE.—The local rate (class or commodity, whichever is lower), shall in all cases be the maximum proportion to lines either east or west of the western junction points named and in the application of local rates as maximum the integrity of the through rate shall be fully maintained by the delivering line.

Via Cincinnati.

76 (*a*). The division of Trans-continental rates between Toledo and Cincinnati and all intermediate points through which Toledo freight passes to Cincinnati shall be—11 per cent. to Cincinnati.

77 (*b*). From all points north of Toledo and the northern boundary line of the States of Indiana and Ohio, between Lakes Michigan and Erie, to and including Detroit and east of the territorial line shown above from Toledo to Cincinnati, to and including Suspension Bridge, Niag-ra Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk and Salamanca, N. Y.; Erie, Pittsburgh and Allegheny, Pa.; Bellaire, Ohio; Wheeling and Parkersburg, W. Va., the divisions shall be—13 per cent. to Cincinnati.

Via Jeffersonville.

78 (*c*). The divisions between Toledo and points which take Toledo rates on the route from Toledo to Cincinnati, but not including Cincinnati, shall be—13 per cent. to Jeffersonville.

79 (*d*). From Cincinnati and points south and west of the line drawn from Toledo to Cincinnati, both these points excluded
874 (example, Indianapolis), the proportions to Jeffersonville shall be—11 per cent. to Jeffersonville.

80 (*e*). To Jeffersonville from points included in the Detroit, Buffalo, Pittsburgh, Wheeling and Parkersburg districts, including Suspension Bridge, Nia-gra Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk and Salamanca, N. Y.; Erie, Pittsburgh and Allegheny, Pa.; Bellaire, Ohio, Wheeling and Parkersburg, W. Va.—15½ per cent. to Jeffersonville.

(*f*.) On traffic via Cincinnati or Jeffersonville the territories are to be the same as on business via Chicago and St. Louis, except that the territory north of Toledo, etc., as shown above, is to be included in the Pittsburgh district, whether the traffic passes via Cincinnati or Louisville.

(*g*.) The Trans-continental classification, rates and rules to govern via Cincinnati and Louisville are those in effect via Chicago, St. Louis and intermediate gateways.

Points on the Harlem Division and Putnam Division of the New York Central & Hudson River Railroad.

The following arrangement will apply in division of rates from points on Harlem division of the New York Central & Hudson River railroad, Port Morris north to and including Ghent, N. Y., and stations on the Putnam division, Dunwoodie to and including Tilly Foster, N. Y.:

The lines east of Chicago and other western junctions will be allowed the following percentages of the gross through rates to Pacific Coast terminal points: (See notes.)

875 81 †To Chicago, Blue Island, Englewood, Stony Island, Washington Heights, Dwight, Streator, Joliet, Kankakee and Seneca, Ill.; Mackinaw City, Sault Ste. Marie, Mich.; Louisville, Ky ..... 27½ per cent.

† NOTE.—The divisions applying east of Chicago and Chicago junctions (as shown above) will also apply east of Kewaunee, Manitowoc and Milwaukee, Wis., when routed west thereof via St. Paul, Minneapolis, or Minnesota transfer, Minn., in connection with Canadian Pacific R'y, Great Northern R'y or Northern Pacific R'y.

82. To Peoria, Bloomington, Morton, Eureka Crandall, Pekin and Decatur, Ill ..... 30 per cent.
83. *To Ashland, Beardstown, East St. Louis, Wann, Alton and East Hannibal (via Wabash R. R. only), Ill ..... 32 per cent.

* NOTE.—Will not apply east of East St. Louis, Wann and Alton, Ill., in connection with Chicago, Burlington & Quincy R'y, on business routed through Chicago or Chicago junctions; Joilet, Kankakee Streator, Peoria or Beardstown, Ill.

84. To Cairo, Ill ..... 33 per cent.
85. To Cincinnati, Ohio (when routed via New Orleans, La.) ..... 24 per cent.

NOTE 1.—The local rates, class or commodity, shall in all cases be the maximum proportions to lines either east or west of the western junction points named, it being understood that, in the application of the local rates as maximum, the integrity of the through rates shall be fully maintained by the delivering lines.

NOTE 2.—In subdivision of the through rate accruing west
876 of Chicago and other western junction points, the Southern Pacific Company (Pacific system) will not accept less revenue than it would receive on basis of the established New York divisions of the New York, Boston and common points rate.

Trunk Line Territory.

West-bound.

In division of the published through rates of 75 cents per 100 lbs., and upwards, from New York anc common points territory, the roads below (in connection with the roads named on page 8 hereof, as parties to agreed division with Central Freight Association) will be allowed east of the gateway junctions specified the percentage proportions hereinafter shown of the through rates applying to Pacific Coast terminals, regardless of whether or not same exceed the local rates to said gateway junctions.

NOTE.—The same revenue accrues to the lines east of Chicago, Mississippi River and Ohio River crossings on shipments destined to interior Pacific Coast points (where through rate is based on terminal rate plus local from the nearest terminal), as they receive on similar shipments destined to Pacific Coast "terminal" points. For list of the interior Pacific Coast points included in this agreement see page 18 hereof.

New York and Common Points Territory.

NOTE.—The same through class and commodity rates as may be effective via Chicage, will apply on traffic routed via Canadian Pacific R'y. (main line), via Prescott, Ont., as follows:

From New York and New York points on New York Central & Hudson River R. R., West Shore R. R., New York, Ontario
877 & Western R'y, and other mines connecting directly therewith (not including Delaware & Hudson Canal Co.);

From stations on Pennsylvania R. R. and Philadelphia & Reading R'y, in the States of Pennsylvania (east of Pittsburgh), New Jersey and Maryland; via Ogdensburg, N. Y.

Northern boundary line.—International boundary.

Western boundary line.—Being the eastern boundary of Pittsburgh, Buffalo and common points territory, as described in west-bound tariff No. 1-E, effective July 1, 1902, but not including points located in that territory, nor points shown in west-bound tariff No. 1-E, as taking Pittsburgh, Buffalo and common points rates.

First. The arrangements provided herein for New York and common points territory will apply from following described points south of the international boundary and east of the eastern boundary of Pittsburgh-Buffalo territory (as described in west-bound tariff No. 1-E, effective July 1, 1902), but not including points located in that territory, nor points shown in west-bound tariff No. 1-E, as taking Pittsburgh, Buffalo and common points rates, via.

Points on the following roads taking the New York, Philadelphia, Baltimore, Albany or Syracuse rate basis to Chicago and other junc-

tion points with western roads (as per through tariffs of initial roads) except as otherwise noted:

Atlantic City R. R.
Baltimore & Ohio R. R.
Bath & Hammondsport R. R.
Bradford, Bordell & Kinzua Ry.
Buffalo, Attica & Arcade R. R.
Buffalo, Rochester & Pittsburgh Ry.
878 Canada Atlantic R. R.
Canadian Pacific Ry.
Central New England Ry. (Poughkeepsie and West.)
Central Vermont Ry.
Chesapeake & Ohio Ry.
Also connection with
Clyde Steamship Line,
Old Dominion Steamship Co.
Cornwall & Lebanon R. R.
Cumberland Valley R. R.
Delaware & Hudson Co.
(Excepting points on northern division taking Boston rates o higher.)
Delaware, Lackawanna & Western R. R.
Erie railroad.
Grand Trunk Ry.
Kanona & Prattsburgh Ry.
Lehigh & Hudson River Ry.
Lehigh & Lackawanna R. R.
Lehigh & New England R. R.
Lehigh Valley R. R. system.
Maryland & Pennsylvania R. R.
New Jersey & New York R. R.
New York & Long Branch R. R.
New York Central & Hudson River R. R.
Not including stations on Harlem division, Port Morris, nort to and including Ghent, N. Y., nor stations on the Putna division, Dunwoodie to and including Tilly Foster, N. Y.
New York, Ontario & Western Ry.
New York, Philadelphia & Norfolk R. R.
879 New York, Susquehanna & Western R. R.
Norfolk & Western Ry.
Pennsylvania & Northwestern R. R.
Pennsylvania R. R.
Philadelphia & Reading Ry.
Pittsburgh, Shawmut & Northern R. R.
Port Jarvis, Monticello & New York R. R.
Raritan River R. R.
Richmond, Fredericksburg & Potomac R. R.
Rockaway Valley Ry.
Staten Island Rapid Transit Ry.

Stewartstown R. R.
Tuckerton R. R.
Wallkill Valley R. R.
Western Maryland R. R.
West Jersey & Seashore R. R.
West Shore R. R.
West Virginia Central & Pittsburgh Ry.
Williamsport & North Branch R. R.
Williams Valley R. R.

Second. The lines east of Chicago and other western junctions will be allowed the following percentages of the through rates applying to Pacific Coast terminals, the terminals or other allowances of the initial trunk lines to be taken care of in the division of the rates east of the western junction points named, viz:

86. † To Chicago, Blue Island, Englewood, Stony Island, Washington Heights, Dwight, Streator, Joliet, Kankakee, Seneca, Ill.; Mackinaw City, Sault Ste Marie, Mich.; Louisville, Ky..... 25 per cent.

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† NOTE.—The divisions applying east of Chicago and Chicago junctions (as shown above) will also apply east of Kewaunee, Manitowoc and Milwaukee, Wis., when routed west thereof, via St. Paul, Minneapolis or Minnesota Transfer, Minn., in connection with Canadian Pacific Ry., Great Northern Ry. or Northern Pacific Ry.

87. To Peoria, Bloomington, Morton, Eureka, Crandall, Pekin and Decatur, Ill..... 27½ per cent.

88. * To Ashland, Beardstown, East St. Louis, Wann, Alton, East Hannibal (via Wabash R. R. only), Ill..... 29 per cent.

* NOTE.—Will not apply east of East St. Louis, Wann and Alton, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

89. To Cairo, Ill..... 30 per cent.

90. To Cincinnati, Ohio (when routed via New Orleans, La.)..... 22 per cent.

Third. No higher rates are to be published from trunk line interior territory than from seaboard points, except that from interior points taking an arbitrary over seaboard rates on traffic to Chicago and other junction points with western roads, the trans-continental lines may apply the same or higher rates to Pacific Coast terminal points than from the seaboard, it being understood that the lines east of Chicago and other junction points with western roads are to be allowed in such cases the arbitrary to the point from which the

seaboard rates apply on traffic to western junction points, in add
to the agreed proportion of the trans-continental tariff ra
881 Fourth. When the through rates from trunk line terr
to final destination are based upon the combination of
rates to Chicago (or other western gateway junction) and be
the eastern roads will be allowed their full local rate to Chicag
other western gateway junction).

Application of rates and divisions from points on Delaware &
son Company's lines north of Schenectady and Mechanics
N. Y., in connection with Canadian Pacific R'y, Great Nort
R'y, Northern Pacific R'y, or Oregon Railroad & Navig
Company.

91. New York and common points rates will apply from p
on the Delaware & Hudson Co.'s lines north of Schenectady
Mechanicsville, N. Y., to and including Caldwell, Whitehall
Eagle Bridge, N. Y., and Rutland, Vt., on shipments to Port
East Portland, Albina and Astoria, Ore., and points north th
taking terminal rates, when routed in connection with Can
Pacific R'y, Great Northern R'y, Northern Pacific R'y, or O
Railroad & Navigation Co. (via Spokane, Wallula Junc., Was
Huntington, Ore.) In division of the through rates auth
above, the lines east of Chicago will receive their local rates.

New York and common points rates will not apply from
on Delaware & Hudson Co.'s lines north of Whitehall, N. Y
from points on Adirondack R'y north of Saratoga, to and incl
North Creek, N. Y.

882 New York, Boston and Common Points.

East-bound.

In division of the published rates on traffic destined to New
Boston and common points, the roads named below (in conn
with the roads named on page 8 hereof as parties to agreed div
with Central Freight Association) will be allowed east of the
way junctions specified the proportions hereinafter shown
through rates applying from Pacific Coast terminals.

SPECIAL NOTE.—The local rate (class or commodity, whiche
lower), shall in all cases be the maximum proportion to lines
east or west of the western junction points named, and in the
cation of local rates as maximum the integrity of the throug
shall be fully maintained by the delivering line.

NOTE.—The same revenue accrues to the lines east of Ch
Mississippi River and Ohio River crossings on shipments fr
terior Pacific Coast points (where through rate is based on ter
rate plus local to the nearest terminal), as they receive on s
shipments originating at Pacific Coast "terminal" points. F
of the interior Pacific Coast points included in this arrangeme
page 18 hereof.

Trunk Line Territory.

Atlantic City R. R.
Baltimore & Ohio R. R.
Bath & Hammondsport R. R.
Bradford, Bordell & Kinzua Ry
Buffalo, Attica & Arcadia R. R.
Buffalo, Rochester & Pittsburgh Ry.
883 Canada Atlantic Ry.
Canadian Pacific Ry.
Central New England Ry.
Central R. R. of New Jersey.
Central Vermont Ry.
Chesapeake & Ohio Ry.
Also in connection with
Clyde Steamship Line,
Merchants & Miners Transportation Co.,
Old Dominion Steamship Co.
Cornwall & Lebanon R. R.
Cumberland Valley R. R.
Delaware & Hudson Co.
Delaware, Lackawanna & Western R. R.
Erie railroad.
Grand Trunk Ry.
Kanona & Prattsburgh Ry.
Lehigh & Hudson River R. R.
Lehigh & Lackawanna R. R.
Lehigh & New England R. R.
Lehigh Valley R. R. system.
Maryland & Pennsylvania R. R.
New Jersey & New York R. R.
New York & Long Branch R. R.
New York Central & Hudson River R. R.
New York, Ontario & Western Ry.
New York, Philadelphia & Norfolk R. R.
New York, Susquehanna & Western R. R.
Norfold & Western Ry.
884 Pennsylvania & Northwestern R. R.
Pennsylvania R. R.
Philadelphia & Reading Ry.
Pittsburgh, Shawmut & Northern R. R.
Port Jervis, Monticello & New York R. R.
Raritan River R. R.
Richmond, Fredericksburg & Potomac R. R.
Rockaway Valley Ry.
Staten Island Rapid Transit Ry.
Stewartstown R. R.
Tuckerton R. R.
Walkill Valley R. R.

R. R.); thence via Baltimore & Ohio R. R., through Glenwood and Washington, Pa., to Wheeling, W. Va.

† NOTE.—On west-bound traffic all stations on Erie railroad east of Salamanca, N. Y., to and including Cuba, N. Y.; also all stations on Bradford division south of Carrolton, N. Y. to and including Johnsonburg, Pa., will be included in Pittsburgh-Buffalo
862 district.

Southern boundary.—From Wheeling, W. Va., following the course of the Ohio river to, but not including, Cincinnati, Ohio.

Western boundary.—Same as eastern boundary line of Cincinnati-Detroit district (defined on page 8) but not including points located thereon.

54.	† East of Mackinaw City or Sault Ste. Marie, Mich.	15 per cent of through rate.

† NOTE.—Will only apply to and from north Pacific Coast terminals and only when routed via Canadian Pacific R'y, Great Northern R'y, Northern Pacific R'y, or Oregon Railroad & Navigation Co. (via Spokane or Wallula, Wash.).

55.	East of Chicago, Dwight Joliet, Kankakee, Seneca, Streator, Ill.	15 per cent. of through rate.
56.	East of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka, or Crandall, Ill.	18½ per cent. of through rate.
57.	* East of East St. Louis, Cairo, Wann, Alton, East Hannibal, Beardstown, Ashland, Ill.	18½ per cent. of through rate.

* NOTE.—Will not apply east of East St. Louis, Wann, Alton, and East Hannibal, Ill, in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown.

863 Points East of Eastern Boundary—Pittsburgh-Buffalo District.

East-bound.

58. Pittsburgh, Buffalo and common points rates will also apply on traffic destined to points located on lines of the

Buffalo, Rochester & Pittsburgh Railway, Erie Railroad,

within the limits of Pittsburgh, Buffalo and common points territory, as described in current east-bound tariffs, subject to divisions as per formulas Nos. 54, 55, 56 and 57.

Points East of Pittsburgh, Pa.

West-bound.

Pittsburgh, Buffalo and common points rates shall also apply from the following described points in the State of Pennsylvania, east of the eastern boundary line of Pittsburgh-Buffalo district, as defined on preceding page, and in division thereof the proportions *shown below of the through rates applying to Pacific Coast terminals* will be allowed to the gateway junctions specified.

SPECIAL NOTE.—The local rate (class or commodity, whichever is lower), shall in all cases be the maximum proportion to lines either east or west of the western junction points named and in the application of local rates as maximum the integrity of the through rate shall be fully maintained by the delivering line.

(*a.*) Pennsylvania R. R.

Stations on main line, Homewood to Latrobe, Pa., both inclusive.
Stations on Western Penna. division, north of Sharpsburg
864 to Edri, Pa., latter inclusive.
Stations on Butler branch, east of Butler, Pa.
Stations on South-west Penna. R'y east — Greensburg to New Stanton, Pa., both inclusive.
Stations on Radebaugh branch.
Stations on Turtle Creek Valley R. R.
Stations on Monongahela division, east of Ormsby to Belle Vernon, Pa., latter inclusive.
Stations on McKeesport & Bessemer R. R.
Stations on Buffalo & Allegheny Valley division north of Pittsburgh, to Kittanning, Pa., latter inclusive.

(*b.*) Baltimore & Ohio R. R.

Stations on Pittsburgh division, east of Glenwood to Jacob's Creek, Pa., latter inclusive.

(*c.*) Pittsburgh & Lake Erie R. R.

Stations on Youghiogheny division, Beck's Run to Whitsett Junction, Pa., both inclusive.
Stations on Monongahela division, Reynoldton to Belle Vernon, Pa., both inclusive.

(*d.*) Bessemer & Lake Erie R. R.

Stations north of Bessemer to and including Butler, Pa.
Following stations on shipments from Carnegie Steel Co., only: Bessemer, Cochran, Munhall, Rankin, Homestead, Pa.

59. † East of Mackinaw City or Sault Ste. Marie, Mich..... 18 per cent. of through rate.

† NOTE.—Will only apply to and from North Pacific Coast terminals and only when routed via Canadian Pacific Ry., Great Northern Ry., Northern Pacific Ry., or Oregon Railroad & Navigation Co. (via Spokane or Wallula, Wash.).

60. East of Chicago, Dwight, Joilet, Kankakee, Seneca, Streator, Ill.. 18 per cent. of through rate.

61. East of Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, Ill..... ..... 21½ per cent. of through rate.

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62. * East of East St. Louis, Cairo, Wann, Alton, East Hannibal, Bradstown, Ashland, Ill ..... 21½ per cent. of through rate.

* NOTE.—Will not apply east of East St. Louis, Wann, Alton and East Hannibal, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

63. East of Cincinnati, Ohio, (when routed via New Orleans, La.)..... 16 per cent. of through rate.

64. East of Jeffersonville, Ind. (when routed via New Orleans, La.)..... 18½ per cent. of through rate.

The principal points in Pennsylvania east of Pittsburgh included under the above description, are the following:

Station.	Location (road).
Allegheny Jct	Penna.
Apollo	Penna.
Ardara	Penna.
Aspinwall	Penna.
Avenue	Penna.
Avonmore	Penna.
Bagdad	Penna.
Baird	Penna.
Baldwin	Penna.
Bamford	Penna.
Banning	P & L E
Beatty	Penna.
Beck's Run	Penna. P & L E
Belle Bridge	P & L E
Belle Vernon	Penna P & L E
Belle Vernon Jct	P & L E
Bessemer	Penna. B & O P & L E *B & L E
Biddle	Penna.
Bissell	B & O
Black Diamond	Penna
Blair	Penna
Blythedale	P & L E
Boggsdale	Penna
Bouquet	Penna
Boston	P & L E
Breckinridge	Penna.
866 Braddock	Penna B & O P & L E
Braeburn	Penna
Brinker	Penna
Brinton	Penna B & O
Brownsdale	P & L E
Brushton	Penna
Buena Vista	P & L E
Bunola	P & L E
Burrell	Penna
Butler Jct	Penna

* Applies only on shipments from Carnegie Steel Co.

Station.	Location (road).
Camden	Penna
Carney	Penna
Caugheys	P & L E
Cedar Brook	P & L E
Charleroi	Penna P & L E
Cheswick	Penna
City Farm	P & L E
Claremont	Penna
Coal Bluff	Penna
Coal Valley	Penna
Cochran	Penna *B & L E
Coleman	Penna
Colfax	Penna
Collinsburg	P & L E
Copeland	Penna
Coultersville	B & O
County Home	Penna
Courtney	Penna
Coursin	P & L E
Creighton	Penna
Culmerville	*B* & L E
Delano	Penna
Demmler	B & O P & L E
Denny	Penna
Dilks	Penna
Donohoe	Penna
Douglass	P & L E
Dravo	P & L E
Dravosburg	Penna
Duncan	P & L E
East Charleroi	P & L E
East Elizabeth	Penna
East Greensburg	Penna
East Pittsburgh	Penna
Edgewood	Penna
Edri	Penna
Elben	Penna
Elizabeth	P & L E
Elkhorn	P & L E
End Avonmore Branch	Penna
867 Fleming Quarry	P & L E
Ford City	Penna
Fordham	P & L E
Fosterville	Penna
Foxtown	Penna
Freeport	Penna
Garver's Ferry	Penna
George	Penna
Gibsonton	P & L E
Glassport	P & L E
Grapeville	Penna
Great Belt	Penna
Greenock	Penna
Greensburg	Penna
Green Springs	Penna
Guysuta	Penna

Station.	Location (road).
Harbison	Penna
Harden	Penna
Harmarville	Penna
Hawkins	Penna
Hays	Penna P & L E
Harman	Penna
Hill	Penna
Hite	Penna
Hoboken	Penna
Homestead	Penna *B & L E P & L E
Homewood	Penna
Houseville	B & L E
Houston Run	Penna
Howard	Penna
Huff	Penna
Hulton	Penna
Hulton Ferry	Penna
Hyde Park	Penna
Irwin	Penna
Jacob's Creek	B & O P & L E
Jeanette	Penna
Jones	Penna
Karns	Penna
Kelly	Penna
Kenny	Penna
Kerr	P & L E
Kiskiminetas Junction	Penna
Kitanning	Penna
Lane	Penna
Larimer	Penna
Latrobe	Penna
Leechburg	Penna
Lock No. 3	P & L E
Lock No. 4	Penna
Logan's Ferry	Penna
Logansport	Penna
868 Lostock	Penna
Lynch	P & L E
McKeesport	Penna B & O P & L E
Manor	Penna
Manorville	Penna
Manown	P & L E
Martin's lamp b'k w'ks	Penna
Meharg	B & L E
Milesville	P & L E
Milltown	Penna
Monastery coke works	Penna
Monongahela City	Penna P & L E
Montrose	Penna
Morath	B & L E
Munhall	Penna *B & L E

* Applies only on shipments from Carnegie Steel Co.

List of Interior Pacific Coast Points on Traffic

From and to which the same revenue accrues to lines east of Chicago, Mississippi River and Ohio River crossings (when through rate is based on terminal rate plus local from the nearest terminal), as they receive on similar shipments originating at or destined to Pacific Coast terminals.

Explanation of Abbriviations.

A. & S E	Arizona & South-Eastern R. R.
A & U	Arizona & Utah Ry.
894 A & C R	Astoria & Columbia River R. R.
B B & B C	Bellingham Bay & British Columbia R. R.
B B & E	Bellingham Bay & Eastern R. R.
B C PTS	British Columbia Points
C A	California Eastern Ry
C NW	California Northwestern Ry.
C P	Canadian Pacific Ry
COR	Corondo R. R.
C S	Columbia Southern Ry
C & C	Carson & Colorado Ry
C & E	Corvallis & Eastern R R
C & L	Colusa & Lake R R
C & R M	Columbia & Red Mount'n and Red Mount's Rys
E & P	Eureka & Palisade R R
G N	Great Northern Ry
G V G & N	Gila Valley, Globe & Northern Ry
K L Pts	Points on Kootenai Lake
K & S	Kaslo & Slocan Ry
L A T	Los Angeles Terminal Ry
M & P & S R V	Maricopa & Phœnix & Salt River Valley R R
N C	Nevada Central R R
N C N-G	Nevada County Narrow-Gauge R R
N-C-Or	Navada-California-Oregon Ry
N C & Ot	National City & Otay Ry
N M & A	New Mexico & Arizona R R
N P	Northern Pacific Ry
N P C	North Pacific Coast R R
N & F S	Nelson & Fort Shepard Ry
O R & N	Oregon Railroad & Navigation Company
895	
O S L	Oregon Short Line R R
P S Pts	Puget Sound Points
P & E	Prescott & Eastern R R
R R V	Rogue River Ry
R Ry	Randsburg Ry
S A & N	Santa Ana & Newport Ry

So Cal	Southern California Ry
S D C & E	San Diego, Cuyamaca & Eastern Ry
S D P & L J	San Diego, Pacific Beach & La Jolla Ry
S Fe Pac	Santa Fe Pacific R R
S F P & P	Santa Fe, Prescott & Phœnix Ry
S F & N	Spokane Falls & Northern Ry
S F & S J V	San Francisco & San Joaquin Valley Ry
S P	Southern Pacific Company
S Ry or C	Sierra Railway of California
U V & P	United Verde & Pacific Ry
V & P	Virginia & Truckee R R
Vis & T	Visalia & Tulare R R
W & C R	Washington & Columbia River Ry
W & O	Washington & Oregon Ry
Yreka	Yreka R R

	Station.		Location (road).
	Abbott	Cal	S P
	Abbottsford	B C	C P
	Abel	Wash	N P
	Aberdeen	Cal	C & C
	Aberdeen	Wash	N P
896	Acampo	Cal	S P
	Acme	Wash	N P
	Acolita	Cal	S P
	Acton	Cal	S P
	Adamana	Ariz	S Fe Pac
	Adams	Ore	O R & N
	Addy	Wash	S F & N
	Adkins	Wash	W & C R
	Adna	Wash	N P
	Adonde	Ariz	S P
	Adonde Well	Ariz	S P
	Adrian	Wash	G N
	Agassiz	Ariz	S Fe Pac
	Agassiz	B C	C P
	Agatha	Cal	S P
	Ager	Cal	S P
	Agnews	Cal	S P
	Agricultural Works	Cal	S P
	Agua Caliente	Cal	S P
	Ailsa	Cal	S P
	Ainslie	Wash	N P
	Ainsworth	B C	C P
	Ainsworth	Wash	N P
	Airlie	Ore	S P
	Akbar	Nev	S P
	Alabama St	Wash	B B & E
	Alameda	Cal	S P

	Station.		Location (road).
897	Alameda, Pacific Av	Cal	S P
	Alameda, Park St	Cal	S P
	Alameda Transfer	Cal	S P
	Alamitos	Cal	S P
	Alamitos Beach	Cal	L A T
	Alamo Concentrator	B C	C P
	Albany	Ore	S P O R & N
	Alberhil-	Cal	So Cal
	Albræ	Cal	S P
	Alca	Ore	S P
	Alcalde	Cal	S P
	Alder Creek	Cal	S P
	Alderton	Wash	N P
	Aldrich	Wash	W & C R
	Aldridge	B C	S P
	Allesandro	Cal	So Cal
	Alfalfa	Wash	N P
	Alger	Wash	G N
	Alhambra	Ariz	S F P & R
	Alhambra	Cal	S P
	Alicel	Ore	O R & N
	Alila	Cal	S P
	Aliso	Cal	So Cal
	Allantown	Ariz	S Fe Pac
	Allendale	Cal	S P
	Alma	Cal	S P
898	Almaden Crossing	Cal	S P
	Almira	Wash	N P
	Almond	Cal	S P
	Almota	Wash	O R & N
	Alpha	Nev	E & P
	Alpine Spur	Cal	S P
	Alpowai	Wash	O R & N
	Alsace	Cal	So Cal
	Alta	Cal	S D C & E
	Alta	Cal	S P
	Altadena	Cal	L A T
	Altamont	Cal	S P
	Alto	Wash	O R & N
	Alvarado	Cal	S P
	Alviso	Cal	S P
	Alvord (Inyo Co)	Cal	C & C
	Amaranth	Cal	S P
	Amboy	Cal	S Fe Pac
	Ambrose	Cal	S F & S J V
	Amedee	Cal	N–C–Or
	American Lake	Wash	N P

	Station.		Location (road).
	Amity	Ore	S P
	Amsterdam	Cal	S P
	Anaheim	Cal	So Cal S P
	Anderson	Cal	S P
	Anderson Brickyard	Cal	S P
899	Anderson	Ida	O R & N
	Andersons	Nev	V & T
	Angell	Ariz	S Fe Pac
	Angiola	Cal	S F & S J V
	Anita	Cal	S P
	Annadel	Cal	S P
	Antares	Ariz	S Fe Pac
	Antelope	Cal	S P
	Antioch	Cal	S P S F & S J V
	Antonio	Cal	S P
	Aplin	Cal	So Cal
	Applegate	Cal	S P
	Aptos	Cal	S P
	Aqua	Cal	S P
	Araby	Ariz	S P
	Araz	Cal	S P
	Arbuckle	Cal	S P
	Arcade	Cal	S P
	Arcadia	Cal	So Cal S P
	Arcadia	Ore	O S L
	Arden	Cal	S P
	Arden	Wash	S F & N
	Arena	Cal	S P
	Argenta	Nev	S P
	Argil	Ore	S P
	Arizola	Ariz	S P
900	Arina	Wash	N P
	Arlington	Cal	So Cal
	Arlington	Ore	O R & N
	Arlington	Wash	N P
	Armbrust	Cal	S P
	Armitage	Ore	S P
	Armitage Grove Pit	Ore	S P
	Armona	Cal	S P
	Armstrong	B C	C P
	Armstrong	Cal	S P
	Army Point	Cal	S P
	Arno	Cal	S P
	Aromas	Cal	S P
	Arpers Spur	Cal	S P

	Station.		Location (road).
	Arrowhead	B C	C P
	Arrowhead	Cal	So Cal
	Arroya Park	Cal	L A T
	Arundel	Cal	S P
	Ashburn	B C	C P
	Ashby	Cal	S P
	Ashcroft	B C	C P
	Ash Fork	Ariz	S Fe Pac
	Ash Hill	Cal	S Fe Pac
	Ashland	Ore	S P
	Ash Slough Spur	Cal	S P
	Asphalto	Cal	S P
	Asti	Cal	C N-W
	Asuncion	Cal	S P
901	Asuncion Gravel Pit	Cal	S P
	Asylum Spur	Cal	S P
	Atascadera	Cal	S P
	Athena	Cal	S P
	Athena	Ore	O R & N W & C R
	Athlone	Cal	S P
	Athol	Ida	N P
	Alta	Cal	S F & S J V
	Atwater	Cal	S P
	Aubrey	Ariz	S Fe Pac
	Auburn	Cal	S P
	Auburn	Wash	N P
	Aumsville	Ore	S P
	Aurant	Cal	S P
	Aurey	Cal	S P
	Aurora	Ore	S P
	Austin	Nev	N C
	Austin Junction	Nev	N C
	Avena	Cal	S F & S J V
	Avenel	Nev	S P
	Avon	Cal	S P
	Avon	Wash	G N
	Ayres	Ore	S P
	Azalea	Cal	S P
	Aztec (Apache Co)	Ariz	S Fe Pac
	Aztec (Yuma Co)	Ariz	S P
902	Azusa	Cal	So Cal
	Azusa Ave	Cal	S P
	Babcock	Wash	W & C R
	Baden	Cal	S P
	Badger	Wash	N P
	Bagdad	Cal	S Fe Pac
	Bagley	Nev	S P

	Station.		Location (road).
	Bailey	Ore	S P
	Bailey Hill	Cal	S P
	Bailey's	Nev	N C
	Baird	Cal	S P
	Baker City	Ore	O R & N
	Bakersfield	Cal	S *O* S Fe Pac
	Baku	Cal	S P
	Baldwin Ave	Cal	S P
	Bale	Cal	S P
	Belfour	B C	C P
	Ball	Cal*l*	S P
	Ballico	Cal	S F & S J V
	Ballston	Ore	S P
	Balm	Ore	S P
	Bandini	Cal	So Cal
	Banner	Cal	S F & S J V
	Banning	Cal	S P
	Bannock	Cal	S Fe Pac
	Banta	Cal	S P
903	Bardins	Cal	S P
	Baring	Wash	G N
	Barlow	Ore	S P
	Barnard	Cal	S P
	Barnet	B C	C P
	Barnhart	Ore	O R & N
	Baron	Ore	S P
	Barro	Cal	S P
	Barro Spur	Cal	S P
	Barstow	Cal	S Fe Pac
	Barton	Cal	S P
	Bartons Spur	Cal	S P
	Base Line	Cal	So Cal
	Basque Ranch	B C	C P
	Bassett	Cal	S P
	Batata	Cal	S F & S J V
	Batavia	Cal	S P
	Bates	Ore	O R & N
	Battle Mountain	Nev	S P
	Bay Point	Cal	S P S F & S J V
	Bay View	Wash	O R & N
	B C Mine	B C	C P
	Beal	Cal	S Fe Pac
	Bealville	Cal	S P S Fe Pac
	Beardsley	Ariz	S F P & P
	Bear Lake	B C	K & S

	Station.		Location (road).
904	Beatty	Ida	O S L
	Beatty	Ore	N P
	Beaumont	Cal	S P
	Beaver	B C	N & F S
	Beaverton	Ore	S P
	Belfast	Wash	G N
	Bellemont	Ariz	S Fe Pac
	Belleville	Nev	C & C
	Belleville	Wash	G N
	Bells	Cal	L A T
	Belmore	Wash	N P
	Belmont	Cal	S P
	Belmont	Wash	N P
	Beltane	Cal	S P
	Belvoir	Cal	S P
	Ben Ali	Cal	S P
	Benedict	Cal	S P
	Bengal	Cal	S Fe Pac
	Benham	Cal	S P
	Benicia	Cal	S P
	Benin	Nev	S P
	Ben Lomond	Cal	S P
	Bennett	Cal	S P
	Benson	Ariz	S P
	Benton Station	Cal	C & C
	Be-O-wa-we	Nev	S P
	Berenda	Cal	S P
905	Beresford	Cal	S P
	Breg	Cal	S P
	Berne	Wash	G N
	Berry	Ariz	S Fe Pac
	Berry	Ore	C & E
	Berryman	Wash	O R & N
	Bertha	Cal	S P
	Bertram	Cal	S P
	Betabel	Cal	S P
	Bethany	Cal	S P
	Bethune	Cal	S P
	Bibo	Ariz	S Fe Pac
	Big Creek	Wash	N P
	Biggs	Cal	S P
	Biggs	Ore	O R & N
	Big Lake	Wash	N P
	Big Trees	Cal	S P
	Bingham Springs	Ore	O R & N
	Birce & Smart	Cal	S P
	Birdsview	Wash	G N
	Bisbee	Ariz	A & S E

	Station.		Location (road).
	Bishop's	Nev	S P
	Bishop's Bar	Wash	O R & N
	Bissell	Cal	S Fe Pac
	Bituma	Cal	S P
	Bixby	Cal	L A T
	Bixler	Cal	S F & S J V
	Black Canyon	Cal	C & C
	Blackburn	Cal	C E
906	Black Bear	Ida	O R & N
	Black Butte	Cal	S P
	Black River	Wash	N P
	Blaisdell	Ariz	S P
	Blake	Cal	S Fe Pac
	Blake's Spur	Ore	O S L
	Blalocks	Ore	O R & N
	Blanchard	Cal	S P
	Blodgett	Ore	C & E
	Bloomer	Cal	S P
	Bloomington	Cal	S P
	Blossoma	Cal	S P
	Blue Canyon	Cal	S P
	Blue Canyon	Wash	B B & E
	Blue Mountain	Ore	O R & N
	Blue Spring	Ore	O R & N
	Bluff Siding	Wash	O R & N
	Blunt	Cal	S P
	Boca	Cal	S P
	Bodkin	Ariz	U V & P
	Bogue	Cal	S P
	Boise	Ida	O S L
	Boise Creek	Wash	N P
	Bolles Junction	Wash	O R & N
	Bolsa	Cal	S P
	Bolsa	Cal	S A & N
	Bon Accord	B C	G N
	Bonair	Cal	S P
907	Bonanza	B C	C P
	Bonita	Cal	N C & Ot
	Bonds	Cal	L A T
	Bonneville	Ore	O R & N
	Bonnie Brae	Cal	N C & Ot
	Bonnington Falls	B C	C P
	Booths	Ore	S P
	Borden	Cal	S P
	Borg	Cal	S P
	Bosque	Ariz	S P
	Bossburg	Wash	S F & N
	Boston Spur	Ida	N P

Western Maryland R. R.
West Jersey & Seashore R. R.
West Shore R. R.
West Virginia Central & Pittsburgh Ry.
Williamsport & North Branch R. R.
Williams Valley R. R.

New England Roads.

Boston & Albany R. R.
Boston & Maine R. R.
Central New England Ry.
Central Vermont Ry.
Grand Trunk Ry.
Maine Central R. R.
Montpelier & Wells River R. R.
New York, New Haven & Hartford R. R.
Rutland R. R.

885 To Atlantic Seaboard points, via: Boston, New York, Philadelphia and Baltimore, and other trunk line points to which same rates apply from the junction points hereinafter named, as per the several fast freight line hand books:

92. East of Chicago, Dwight, Joliet, Kankakee, Mazon, Seneca or Streator, Ill.; Mackinaw City and Sault Ste. Marie, Mich.; Louisville, Ky..... 25 per cent.

93. * East of East St. Louis, Cairo, Wann, Alton, East Hannibal, Ashland, Beardstown, Peoria, Bloomington, Pekin, Decatur, Morton, Eureka or Crandall, Ill.. 29 per cent.

* NOTE.—Will not apply east of East St. Louis, Wann, Alton, and East Hannibal, Ill., in connection with Chicago, Burlington & Quincy Ry. on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streater, Peoria or Beardstown, Ill.

94. East of Cincinnati, Ohio (when routed via New Orleans, La.)..... 22 per cent.

95. To points east of the western termini of the trunk lines (in Atlantic Seaboard common points territory), and which take less than seaboard rates from the above named junction points, as per fast freight line hand books, the lines east thereof will be allowed, as their proportion of the through rates, the same divisions as above authorized for Atlantic Seaboard points.

886 Boston, Mass., and Points in New England.

West-bound.

The following arrangements will apply in connection with—
Boston & Albany R. R.
Boston & Maine R. R.

Canadian Pacific Ry.
Central New England Ry.
Central Vermont railway.
Grand Trunk Ry.
Maine Central R. R. (White Mountain div.)
Montpelier & Wells River R. R.
New York, New Haven & Hartford R. R.
Rutland R. R.

The lines east of Chicago and other western junctions will be allowed the following percentages of the through rates to Pacific Coast terminal points, but not to exceed local rates, as provided in section 5, below:

NOTE.—The same through class and commodity rates as may be effective via Chicago, will apply on traffic routed via Canadian Pacific Ry. (main line), from stations on Main Central R. R., Boston & Maine R. R., and other New England lines connecting therewith; also from stations on New York, New Haven & Hartford R. R., when consigned via Newport, Vt.

First. From Boston, Mass. (proper):

96. †To Chicago, Blue Island, Englewood, Stony Island, Washington Heights, Dwight, Streator, Joliet, Kankakee and Seneca, Ill.; Mackinaw City, Sault Ste. Marie, Mich.; Louisville, Ky.. 27½ per cent.

887 †NOTE.—The divisions applying east of Chicago and Chicago junctions (as shown above) will also apply east of Kewaunee, Manitowoc and Milwaukee, Wis., when routed west thereof via St. Paul, Minneapolis or Minnesota transfer, Minn., in connection with Canadian Pacific Ry., Great Northern Ry. or Northern Pacific Ry.

97. To Peoria, Bloomington, Morton, Eureka, Crandall, Pekin and Decatur, Ill..... 30 per cent.
98. *To Ashland, Beardstown, East St. Louis, Wann, Alton and East Hannibal (via Wabash R. R. only), Ill..... 32 per cent.

*NOTE.—Will not apply east of East St. Louis, Wann and Alton, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

99. To Cairo, Ill..... 33 per cent.
100. To Cincinnati, Ohio (when routed via New Orleans, La.)..... 24 per cent.

Second. From Portland, Lewiston and Brunswick, Me., when routed via fast freight lines of Boston & Maine railroad.

101. To Chicago, Blue Island, Englewood, Stony Island, Washington Heights, Dwight, Streator, Joliet, Kankakee and Seneca, Ill.; Mackinaw City, Sault Ste. Marie, Mich.; Louisville, Ky.. 27½ per cent.

NOTE.—The divisions applying east of Chicago and Chicago junctions (as shown above) will also apply east of Kewaunee, Manitowoc and Milwaukee, Wis., when routed west thereof via St.
888 Paul, Minneapolis or Minnesota transfer, Minn., in connection with Canadian Pacific Ry., Great Northern Ry. or Northern Pacific Ry.

102. * To Ashland, Beardstown, East St. Louis, Wann, Alton, and East Hannibal (via Wabash R. R. only), Ill..... 32 per cent.

* NOTE.—Will not apply east of East St. Louis, Wann and Alton, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

103. To Cincinnati, Ohio (when routed via New Orleans, La.)..... 24 per cent.

Third. From Portland, Lewiston, Yarmouth Jct., Me., Groveton Jct., Berlin Falls, N. H., and other competing points on the Grand Trunk Ry. east of Montreal, when routed via the Grand Trunk Railway system:

104. To Chicago, Ill..... 27½ per cent.

NOTE.—The divisions applying east of Chicago (as shown above), will also apply east of Kewaunee, Manitowoc, and Milwaukee, Wis., when routed west thereof via St. Paul, Minneapolis or Minnesota transfer, Minn., in connection with Canadian Pacific Ry., Great Northern Ry., or Northern Pacific Ry.

105. Fourth. The same through class and commodity rates as may be effective from Boston, Mass. (proper), will apply to Pacific Coast terminal points (subject to a minimum through rate of 75 cents per 100 lbs.), from all New England points taking Boston rates, provided that on traffic routed via Boston the Trans-continental lines shall assume the cost of transportation of such traffic from such points of origin to Boston, including transfer charges for delivery to
889 the stations of the several lines in Boston; it being understood that, *except as otherwise provided above*, traffic from interior New England points which is not routed via Boston shall continue to be billed at rates and classification at present in effect to Chicago, and other junctions with western roads upon west-bound Pacific Coast traffic, viz: on the basis of 75, 65, 50, 35, 25 cents per 100 lbs. to Chicago, on the six classes respectively, subject to the official classification.

Fifth. The local rates, class or commodity, shall in all cases be the maximum proportions to lines east or west of the western junction points named, it being understood that, in the application of the local rates as maxima, the integrity of the through rates shall be fully maintained by the delivering lines.

Sixth. The Trans-continental lines shall publish and file all tariffs of through rates, and shall issue all bills of lading.

Seventh. Where New York and common point rates are applied from Boston, Mass., and points in New England, to Southern Pacific Company (Pacific system) will not accept less revenue (in subdivision of the proportion of the through rate accruing west of Chicago and other western junction points) than it would receive on basis of the established New York divisions of the New York and common points rate.

Points on Norfolk & Western Railway.

West-bound.

On business from all points on the Norfolk & Western railway east of Bristol, Tenn., with exception of points located on—Winston-Salem division (extending south of Roanoke, Va., to Winston-
890 Salem, N. C., inclusive), and

Durham division (extending south of Lynchburg, Va., to Durham, N. C., inclusive),

the lines east of Chicago and other western junctions will be allowed the percentage proportions shown below of the authorized through Trans-continental rates, whether or not same exceed the local rates to said gateway junctions:

106. † East of Mackinaw City or Sault Ste. Marie, Mich..... 25 per cent.

† NOTE.—Will only apply to and from North Pacific Coast terminals, and only when routed via Canadian Pacific Ry., Great Northern Ry., Northern Pacific Ry., or Oregon Railroad & Navigation Co.: (via Spokane or Wallula, Wash.)

107. To Chicago, Blue Island, Englewood, Stony Island, Washington Heights, Dwight, Streator, Joliet, Kankakee, Seneca, Ill..... 25 per cent.
108. To Peoria, Bloomington, Morton, Eureka, Crandall and Pekin, Ill ..... 27½ per cent.
109. * To Ashland, Beardstown, East St. Louis, Ill..... 29 per cent.

* NOTE.—Will not apply east of East St. Louis, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago, or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

110. To Cairo, Ill..... 30 per cent.
111. To Cincinnati, Ohio, (when routed via New Orleans, La.)..... 22 per cent.

GENERAL NOTE.—The remainder of the through rates, after deducting the proportions accruing east of the gateway junctions as herein provided, will apply west of said gateway junctions,
891 and will subdivide on basis of the established divisions.

Points in Eastern Canada.

East-bound.

The authorized through rates applying on Trans-continental traffic from Pacific Coast terminals to points in Eastern Canada (designated below) will divide as follows:

Via Chicago or East St. Louis, Ill.

To	East of Chicago, Ill.	*East of East St. Louis, Ill.
113. Points taking "Toronto" rates	15 per cent	18½ per cent.
114. Points taking "Montreal" rates.....	25 per cent	29 per cent.
Points taking "Sherbrooke" rates.....		
115. Points taking "Quebec" rates.	25 per cent. of "Montreal" through rate. Line east of Chicago to be allowed the difference between "Montreal" through rate to destination in addition to 25 per cent. of "Montreal" rate.	29 per cent. of "Montreal" through rate. Line east of East St. Louis to be allowed the difference between "Montreal" through rate and the through rate to destination in addition to 29 per cent. of "Montreal" rate.
Points taking "Cacouna" rates		
Points taking "St. John, N. B.," rates.....		
Points taking "Mulgrave" rates.....		
Points taking "Sidney" rates..		

*NOTE.—Will not apply east of East St. Louis, Wann and Alton, Ill., in connection with Chicago, Burlington & Quincy Ry. on business routed through Chicago or Chicago junctions, Kankakee, Streator, Peoria or Beardstown, Ill.

892 West-bound.

The authorized through rates applying on Trans-continental traffic from points in Eastern Canada (designated below) to Pacific Coast terminals, will divide as follows:

Via Chicago or East St. Louis, Ill.

From	East of Chicago, Ill.	*East of East St. Louis, Ill.
116. Points taking "Toronto" rates.....	15 per cent.....	18½ per cent.
117. Points taking "Montreal" rates	25 per cent..... ...	29 per cent.
118. Points taking "Sherbrooke" rates	25 per cent. of "Montreal" through rate. Line east of Chicago to be allowed the difference between "Montreal" through rate and the rate from point of origin in addition to 25 per cent. of "Montreal" rate.	29 per cent. of "Montreal" through rate. Line east of East St. Louis to be allowed the difference between "Montreal" through rate and the through rate from point of origin in addition to 29 per cent. of "Montreal" rate.
Points taking "Quebec" rates.....		
Points taking "Cacouna" rates.....		
Points taking "St.John, N. B.," rates.....		
Points taking "Mulgrave" rates.....		
Points taking "Sidney" rates		

*Note.—Will not apply east of East St. Louis, Wann, Alton, and East Hannibal, Ill., in connection with Chicago, Burlington & Quincy Ry., on business routed through Chicago or Chicago junctions; Joliet, Kankakee, Streator, Peoria or Beardstown, Ill.

893 Formula for Disposing of Fractions.

In computing divisions of through rates the following rule will govern in disposing of fractions:

5/100 and under will not be counted.
Over 5/100 to 15/100 inclusive will be counted 1/10
Over 15/100 to 25/100 " " 2/10
Over 25/100 to 35/100 " " 3/10
Over 35/100 to 45/100 " " 4/10
Over 45/100 to, but not including 55/100 will be counted 5/10
55/100 " " 65/100 " " 6/10
65/100 " " 75/100 " " 7/10
75/10– " " 85/100 " " 8/10
85/100 " " 95/100 " " 9/10
95/100 and over 1c

	Station.		Location (road).
	Callender	Cal	S P
	Calloway	Ore	S P
	Calvada	Cal	S P
911	Calwa	Cal	S P S F & S J V
	Camdén	Wash	G N
	Cameron	Cal	S P S Fe Pac
	Cameron Switch	Cal	N–C–Or
	Cambell	Cal	S P
	Campbells	Wash	N P
	Camphora	Cal	S P
	Camp Taylor	Cal	N P C
	Camulos	Cal	S P
	Cana	Cal	S P
	Canby	Ore	S P
	Candelaria	Nev	C & C
	Cando	Cal	S P
	Canemah	Ore	S P
	Canisteo	Ariz	S P
	Cannon	Cal	S P
	Canoga	Cal	S P
	Canon	Ore	W & C R
	Canon Diablo	Ariz	S Fe Pac
	Cantara	Cal	S P
	Canton	Wash	N P
	Canyon	Nev	N C
	Canyon	Wash	O R & N
	Capay	Cal	S P
	Cape Horn	B C	C P
	Cape Horn	Cal	S P
912	Capistrano	Cal	So Cal
	Capitola	Cal	S P
	Carbonado	Wash	N P
	Carbondale	Cal	S P
	Cariboo City	B C	C P
	Carlin	Nev	S P
	Carlsbad	Cal	So Cal
	Cariton	Ore	S P
	Carmenita	Cal	S P
	Carnadero	Cal	S P
	Carpinteria	Cal	S P
	Carrizo	Ariz	S Fe Pac
	Carrols	Wash	N P
	Car Shops	Ore	S P
	Carson	Nev	V & T
	Caruthers	Cal	S P
	Casa Blanca	Cal	So Cal

	Station.		Location (road).
	Casa Grande	Ariz	S P
	Cascade	B C	C P
	Cascade	Cal	S P
	Cascade Locks	Ore	O R & N
	Cascades	Wash	O R & N
	Cascade Tunnel	Wash	G N
	Cases	Wash	N P
	Cashmere	Cal	S P
	Casitas	Cal	S P
	Casmalia	Cal	S P
913	Castiac	Cal	S P
	Castella	Cal	S P
	Castlegar	B C	C P
	Castle Crag	Cal	S P
	Castle Rock	Ore	O R & N
	Castle Rock	Wash	N P
	Castros	Cal	S P
	Castroville	Cal	S P
	Cathcart	Wash	N P
	Cathlamet	Wash	O R & N
	Caton's	Nev	N C
	Caylet	Cal	S P
	Cayote	Ore	O R & N
	Cayuse	Ore	O R & N
	Cazadero	Cal	N P C
	Cecile	Cal	S F & S J V
	Cecils	Ore	O R & N
	Cedar	Nev	S P
	Cedar Glade	Ariz	S F P & P
	Cedar Landing	Ore	O R & N
	Cedar River	Wash	N P
	Celilo	Ore	O R & N
	Centerville	Cal	S P
	Centenela	Cal	So Cal
	Central	Ariz	G V G & N
	Central	Wash	B B & B C
	Central Avenue	Cal	So Cal
914	Central Ferry	Wash	O R & N
	Central Mine	Cal	S P
	Central Point	Ore	S P
	Centralia	Wash	N P
	Ceres	Cal	S P
	Ceres	Wash	N P
	Cerritos	Cal	S P
	Challender	Ariz	S Fe Pac
	Chambers	Wash	N P
	Chamiso	Ariz	S P
	Champion	B C	N & F S

	Station.		Location (road).
	Callender	Cal	S P
	Calloway	Ore	S P
	Calvada	Cal	S P
911	Calwa	Cal	S P S F & S J V
	Camdén	Wash	G N
	Cameron	Cal	S P S Fe Pac
	Cameron Switch	Cal	N–C–Or
	Cambell	Cal	S P
	Campbells	Wash	N P
	Camphora	Cal	S P
	Camp Taylor	Cal	N P C
	Camulos	Cal	S P
	Cana	Cal	S P
	Canby	Ore	S P
	Candelaria	Nev	C & C
	Cando	Cal	S P
	Canemah	Ore	S P
	Canisteo	Ariz	S P
	Cannon	Cal	S P
	Canoga	Cal	S P
	Canon	Ore	W & C R
	Canon Diablo	Ariz	S Fe Pac
	Cantara	Cal	S P
	Canton	Wash	N P
	Canyon	Nev	N C
	Canyon	Wash	O R & N
	Capay	Cal	S P
	Cape Horn	B C	C P
	Cape Horn	Cal	S P
912	Capistrano	Cal	So Cal
	Capitola	Cal	S P
	Carbonado	Wash	N P
	Carbondale	Cal	S P
	Cariboo City	B C	C P
	Carlin	Nev	S P
	Carlsbad	Cal	So Cal
	Cariton	Ore	S P
	Carmenita	Cal	S P
	Carnadero	Cal	S P
	Carpinteria	Cal	S P
	Carrizo	Ariz	S Fe Pac
	Carrols	Wash	N P
	Car Shops	Ore	S P
	Carson	Nev	V & T
	Caruthers	Cal	S P
	Casa Blanca	Cal	So Cal

	Station.		Location (road).
	Casa Grande	Ariz	S P
	Cascade	B C	C P
	Cascade	Cal	S P
	Cascade Lockz	Ore	O R & N
	Cascades	Wash	O R & N
	Cascade Tunnel	Wash	G N
	Cases	Wash	N P
	Cashmere	Cal	S P
	Casitas	Cal	S P
	Casmalia	Cal	S P
913	Castiac	Cal	S P
	Castella	Cal	S P
	Castlegar	B C	C P
	Castle Crag	Cal	S P
	Castle Rock	Ore	O R & N
	Castle Rock	Wash	N P
	Castros	Cal	S P
	Castroville	Cal	S P
	Cathcart	Wash	N P
	Cathlamet	Wash	O R & N
	Caton's	Nev	N C
	Caylet	Cal	S P
	Cayote	Ore	O R & N
	Cayuse	Ore	O R & N
	Cazadero	Cal	N P C
	Cecile	Cal	S F & S J V
	Cecils	Ore	O R & N
	Cedar	Nev	S P
	Cedar Glade	Ariz	S F P & P
	Cedar Landing	Ore	O R & N
	Cedar River	Wash	N P
	Celilo	Ore	O R & N
	Centerville	Cal	S P
	Centenela	Cal	So Cal
	Central	Ariz	G V G & N
	Central	Wash	B B & B C
	Central Avenue	Cal	So Cal
914	Central Ferry	Wash	O R & N
	Central Mine	Cal	S P
	Central Point	Ore	S P
	Centralia	Wash	N P
	Ceres	Cal	S P
	Ceres	Wash	N P
	Cerritos	Cal	S P
	Challender	Ariz	S Fe Pac
	Chambers	Wash	N P
	Chamiso	Ariz	S P
	Champion	B C	N & F S

	Station.		Location (road).
	Champion's	Cal	S P
	Champoeg	Ore	O R & N
	Chandler	Cal	S P
	Chandler	Wash	N P
	Chaparal	Ariz	P & E
	Chapman	Cal	S P So Cal
	Chapman	Wash	N P
	Chard	Wash	O R & N
	Charleston	Ariz	A & S E
	Charleston	Cal	S P
	Charter Oak	Cal	S P
	Chat	Cal	N–C–Or
	Chatsworth Park	Cal	S P
	Chattaroy	Wash	G N
	Chahalis	Wash	N P
915	Chemawa	Ore	S P
	Cheney	Wash	N P
	Cherokee	Ariz	S Fe Pac
	Cherry	Cal	S P
	Cherry Creek	Ariz	P & E
	Cherry Creek	B C	C P
	Chester	Wash	O R & N
	Chestnut	Cal	S P
	Chewelah	Wash	S F & N
	Chico	Cal	S P
	Chinese	Cal	S Ry of C
	Chino	Ariz	S Fe Pac
	Chino	Cal	S P
	Chittenden's	Cal	S P
	Chitwood	Ore	C & E
	Chiwaukum	Wash	G N
	Chloride	Ariz	A & U
	Chrisman	Cal	S P
	Christopher	Wash	N P
	Chromite	Cal	S P
	Chrystal Lake	Cal	S P
	Chrystoval	Ariz	S P
	Chualar	Cal	S P
	Chuckanut	Wash	G N
	Chula Vista	Cal	N C & Ot
	Church	Wash	N P
	Churchill	Nev	C & C
916	Cicero	Cal	S P
	Cienega	Cal	S P
	Cinder Pit	Ariz	S Fe Pac
	Cipole	Ore	S P
	Cisco	Cal	S P

	Station.		Location (road).
	Citrona	Cal	S P
	Citrus	Cal	C & C
	Clackamas	Ore	S P
	Clanwilliam	B C	C P
	Clsquato	Wash	N P
	Claremont	Cal	So Cal
	Claribel	Cal	S P
	Clark's	Cal	S P
	Clark's	Nev	N C
	Clarksona	Cal	S P
	Clarnie	Ore	O R & N
	Clatskanie	Ore	A & C R
	Claus	Cal	S P
	Clauston	Cal	S F & S J V
	Clawson	Ore	S P
	Clay	Cal	S P
	Clay Pit	Ore	S P
	Clayton	B C	B C Pts.
	Clayton	Wash	S F & N
	Clealum	Wash	N P
	Clearbrook	Wash	B B & B C
	Clear Lake	Wash	N P
	Clearwater	Cal	L A T
917	Clements	Cal	S P
	Clems (Tunnel No. 4)	Cal	S P
	Cliffs	Ariz	S Fe Pac
	Clifton	Nev	C & C
	Clifton	Ore	O R & N
	Clifton	Ore	A & C R
	Climax	Wash	W & C R
	Clinton	Wash	P S Pts
	Clipper Gap	Cal	S P
	Cloverdale	B C	G N
	Cloverdale	Cal	C N-W
	Clovis	Cal	S P
	Cluro	Nev	S P
	Clyde	Cal	S P
	Clyde	Wash	W & C R
	Clyde Spur	Ida	N P
	Coachella	Cal	S P
	Coalinga	Cal	S P
	Coal Creek	B C	C P
	Coburg	Ore	S P
	Coburn	Cal	S P
	Coburns	Cal	S P
	Cochrane	Ore	S P
	Cody	B C	K & S
	Cœur d'Alene	Ida	N P

	Station.		Location (road).
	Coffee Creek	B C	C P
	Coggins	Cal	S P
918	Cokedale	Wash	G N
	Cold Springs	Ore	O R & N
	Cole	Cal	S P
	Colestin	Ore	S P
	Colfax	Cal	S P
	Colfaz	Wash	O R & N
	Colfred	Ariz	S P
	College Park	Cal	S P
	Collins	Cal	S P
	Collins (Walla Walla Co)	Wash	W & C R
	Colma	Cal	S P
	Colorado	Cal	S P
	Colton	Cal	S P So Cal
	Colton	Wash	N P
	Colton Limekiln	Cal	S P
	Colton Transfer	Cal	S P
	Columbia	Ore	N P
	Columbia City	Ore	O R & N
	Columbia River	Wash	G N
	Colusa	Cal	C & L
	Colusa Junction	Cal	S P
	Colville	Wash	S F & N
	Cometa	Cal	S P
	Compton	Cal	S P
	Comstock	Ore	S P
	Comstock Mill Track	Ore	S P
919	Conant	Cal	S P
	Concord	Cal	S P
	Conejo	Cal	S F & S J V
	Congress Junction	Ariz	S F P & P
	Conley	Cal	S P
	Conleys	Ore	O R & N
	Connell	Wash	N P
	Contention	Ariz	S P
	Cook	Ore	S P
	Coombs	Cal	S P
	Coopers	Cal	S P
	Cooperstown	Cal	S Ry of C
	Copeland	Cal	S P
	Copley	Cal	S P
	Coppei	Wash	W & C R
	Corbetts	Ore	O R & N
	Corcoran	Cal	S F & S J V
	Cordelia	Cal	S P
	Corea	Wash	G N

	Station.		Location (road).
	Corfu	Cal	S P
	Cornelius	Ore	S P
	Corning	Cal	S P
	Cornwall	Cal	S P
	Corona	Cal	So Cal
	Coronado Beach	Cal	Cor
	Cortaro	Ariz	S P
	Corte Madera	Cal	N P C
	Corvallis	Ore	S P O R & N
920	Coryell	B C	C P
	Cosgrove	Nev	S P
	Cosmopolis	Wash	N P
	Cosnino	Ariz	S Fe Pac
	Cotati	Cal	C N-W
	Cothrins	Cal	S P
	Cottage Grove	Ore	S P
	Cottonwood (San Brndo Co)	Cal	So Cal
	Cottonwood (Shasta Co)	Cal	S P
	Coulee City	Wash	N P
	County Farm	Cal	L A T
	Coupeville	Wash	P S Pts
	Cove Orchard	Ore	S P
	Covina	Cal	S P
	Covington	Wash	N P.
	Cowell	Cal	S P
	Cox Lane	Cal	S P
	Coyote	Cal	S P
	Coyote Gravel Pit	Cal	S P
	Crabtree	Ore	S P
	Crafton	Cal	S P So Cal
	Craigellachie	B C	C P
	Cranbrook	B C	C P
	Crane	Cal	S P
	Cranor	Ore	S P
921	Crary	Cal	So Cal
	Crater	Wash	G N
	Craycroft	Cal	S P
	Cressid	Nev	S P
	Cressy	Cal	S F & S J V
	Crest	Wash	O R & N
	Creston	B C	C P
	Creston	Cal	S P
	Creston	Wash	N P
	Creston Junction	Wash	N P
	Creswell	Ore	S P
	Crittenden	Ariz	S P

	Station.		Location (road).
	Crocker	Wash	N P
	Crockett	Cal	S P
	Crookton	Ariz	S Fe Pac
	Crosby Spur	Ida	N P
	Cross Creek	Cal	S P
	Crowley	Ore	S P
	Crow's Landing	Cal	S P
	Crozier	Ariz	S Fe Pac
	Crystal L Water Tank	Cal	S P
	Cuba	Cal	S F & S J V
	Cucamonga	Cal	S P
	Cudahys	Cal	S P
	Cuesta	Cal	S P
	Cumberland	Wash	N P
	Cummings	Cal	S P
922	Curtin	Ore	S P
	Curtis	Cal	S P
	Curtis	Nev	N G
	Custer	Wash	G N
	Cutler	Cal	S F & S J V
	Cutler	Ariz	G V G & N
	Cypress Lawn	Cal	S P
	Daggett	Cal	S Fe Pac
	Dagon	Cal	S P
	Dallas	Ore	S P
	Dalles	Ore	O R & N
	Danby	Cal	S Fe Pac
	Danville	Cal	S P
	Date Crrek	Ariz	S F P & P
	Daulton	Cal	S P
	Davenport	Ariz	S Fe Pac
	Davenport	Wash	N P
	Davis	Ariz	U V & P
	Davis	Cal	S P
	Day	Cal	S P
	Days Camp	Wash	N P
	Dayton	Nev	C & C
	Dayton	Ore	O R & N S P
	Dayton	Wash	W & C R O R & N
	Deadwood	Cal	S P
	Dearing's	Ariz	S F P & R
	Dearins Spur	B C	C P
923	Deception	Wash	P S Pts
	Declez	Cal	S P
	Decoto	Cal	S P
	Deep Creek	Wash	N P

	Station.		Location (road.)
	Deer Island	Ore	N P
	Deer Park	B C	C P
	Deer Park	Wash	S P & N
	Deeth	Nev	S P
	Delaney	Wash	O R & N
	Delano	Cal	S P
	Delevan	Cal	S P
	Delhi	Cal	S P
	Del Mar	Cal	So Cal
	Del Mar	Cal	S P
	Delosa	Ariz	S P
	Del Rey	Cal	S F & S J V
	Del Rio	Ariz	S F P & P
	Del Rosa	Cal	So Cal
	Delta	Cal	S P
	De Luz	Cal	So Cal
	Deming	Wash	N P
	De Moss	Ore	C S
	Denair	Ariz	S Fe Pac
	Dennison	Ariz	S Fe Pac
	Denver Canyon Siding	B C	C P
	Derry	Ore	S P
	Des Chutes	Ore	O R & N
924	Desert	Nev	S P
	Detroit	Ore	C & E
	Dewey	Ariz	G V G & N
	De Wolf	Cal	S F & S J V
	Diamond	Cal	S P
	Diamond	Nev	E & P
	Diamonds	Wash	O R & N
	Dickinson	Cal	S F & S J V
	Dieringer	Wash	N P
	Dietz	Cal	S P
	Dillard	Ore	S P
	Dilley	Ore	S P
	Dillon	Nev	N C
	Dinuba	Cal	S P
	Distillery Spur	*S P*	——
	Divide	Ore	S P
	Divide	Wash	O R & N
	Dixie	Wash	W & C R
	Dixon	Cal	O R & N
	Dodsons	Ore	O R & N
	Dodsworth	Cal	S P
	Dog Creek	B C	C P
	Dolph	Ore	S P
	Dominguez	Cal	S P
	Donahue	Cal	C N-W

	Station.		Location (road).
904	Beatty	Ida	O S L
	Beatty	Ore	N P
	Beaumont	Cal	S P
	Beaver	B C	N & F S
	Beaverton	Ore	S P
	Belfast	Wash	G N
	Bellemont	Ariz	S Fe Pac
	Belleville	Nev	C & C
	Belleville	Wash	G N
	Bellis	Cal	L A T
	Belmore	Wash	N P
	Belmont	Cal	S P
	Belmont	Wash	N P
	Beltane	Cal	S P
	Belvoir	Cal	S P
	Ben Ali	Cal	S P
	Benedict	Cal	S P
	Bengal	Cal	S Fe Pac
	Benham	Cal	S P
	Benicia	Cal	S P
	Benin	Nev	S P
	Ben Lomond	Cal	S P
	Bennett	Cal	S P
	Benson	Ariz	S P
	Benton Station	Cal	C & C
	Be-O-wa-we	Nev	S P
	Berenda	Cal	S P
905	Beresford	Cal	S P
	Breg	Cal	S P
	Berne	Wash	G N
	Berry	Ariz	S Fe Pac
	Berry	Ore	C & E
	Berryman	Wash	O R & N
	Bertha	Cal	S P
	Bertram	Cal	S P
	Betabel	Cal	S P
	Bethany	Cal	S P
	Bethune	Cal	S P
	Bibo	Ariz	S Fe Pac
	Big Creek	Wash	N P
	Biggs	Cal	S P
	Biggs	Ore	O R & N
	Big Lake	Wash	N P
	Big Trees	Cal	S P
	Bingham Springs	Ore	O R & N
	Birce & Smart	Cal	S P
	Birdsview	Wash	G N
	Bisbee	Ariz	A & S E

	Station.		Location (road).
	Bishop's	Nev	S P
	Bishop's Bar	Wash	O R & N
	Bissell	Cal	S Fe Pac
	Bituma	Cal	S P
	Bixby	Cal	L A T
	Bixler	Cal	S F & S J V
	Black Canyon	Cal	C & C
	Blackburn	Cal	C E
906	Black Bear	Ida	O R & N
	Black Butte	Cal	S P
	Black River	Wash	N P
	Blaisdell	Ariz	S P
	Blake	Cal	S Fe Pac
	Blake's Spur	Ore	O S L
	Blalocks	Ore	O R & N
	Blanchard	Cal	S P
	Blodgett	Ore	C & E
	Bloomer	Cal	S P
	Bloomington	Cal	S P
	Blossoma	Cal	S P
	Blue Canyon	Cal	S P
	Blue Canyon	Wash	B B & E
	Blue Mountain	Ore	O R & N
	Blue Spring	Ore	O R & N
	Bluff Siding	Wash	O R & N
	Blunt	Cal	S P
	Boca	Cal	S P
	Bodkin	Ariz	U V & P
	Bogue	Cal	S P
	Boise	Ida	O S L
	Boise Creek	Wash	N P
	Bolles Junction	Wash	O R & N
	Bolsa	Cal	S P
	Bolsa	Cal	S A & N
	Bon Accord	B C	G N
	Bonair	Cal	S P
907	Bonanza	B C	C P
	Bonita	Cal	N C & Ot
	Bonds	Cal	L A T
	Bonneville	Ore	O R & N
	Bonnie Brae	Cal	N C & Ot
	Bonnington Falls	B C	C P
	Booths	Ore	S P
	Borden	Cal	S P
	Borg	Cal	S P
	Bosque	Ariz	S P
	Bossburg	Wash	S F & N
	Boston Spur	Ida	N P

	Station.		Location (road.)
	Boswell Springs	Cal	S P
	Bothell	Wash	N P
	Boulder Creek	Cal	S P
	Boulder Mill	Cal	S P
	Boundary	Wash	S F & N
	Boundary Falls	B C	C P
	Bowerbank	Cal	S P
	Bowie	Ariz	S P
	Bowles	Cal	S F & S J V
	Bowman	Cal	S P
	Box Springs	Cal	So Cal
	Brace	Wash	N P
	Bradley	Cal	S P
	Brandon	Cal	S P
	Brandt	Ore	S P
	Brannians Spur	Wash	N P
	Brentwood	Cal	S P
908	Bretona	Cal	S P
	Brewery Switch	Cal	S P
	Brickyard No. 1	Cal	S P
	Brickyard Spur	Cal	S P
	Bridal Veil	Ore	O R & N
	Bridges	Nev	N C
	Briedwell	Ore	S P
	Briggston	Cal	S P
	Brighton	Cal	S P
	Brightside	Cal	S P
	Bristol	Wash	N P
	Broadmead	Ore	S P
	Bromela	Cal	S P
	Brookfield	Wash	O R & N
	Brookhurst	Cal	S P
	Brookline	Ariz	S P
	Brooks	Ore	S P
	Brookside	Cal	S P
	Browns (Humboldt Co)	Nev	S P
	Browns (Washoe Co)	Nev	V & T
	Brown's Spur	Ida	N P
	Brownstone Spur	Cal	S P
	Brownsville	Ore	S P
	Brunswick	Nev	V & T
	Bryant	Cal	S P
	Bryant	Ore	C & E
	Bryant	Wash	N P
909	Bryant	Ore	S P
	Buchli	Cal	S P
	Buckeye	Cal	S P
	Buckeye	Wash	S F & N

	Station.		Location (road).
	Buckhorn	Cal	S P
	Buckley	Wash	N P
	Buckley's Spur	Wash	O R & N
	Bucoda	Wash	N P
	Buena	Cal	So Cal
	Buena Park	Cal	S P
	Buena Vista	Cal	C N-W
	Buena Vista	Ore	O R & N
	Buhach	Cal	S P
	Bullard	Cal	S F & S J V
	Bunn	Ida	N P
	Burbank	Cal	S P
	Burchell	Cal	S F & S J V
	Burdells	Cal	C N-W
	Burke	Ida	N P O R & N
	Burkhalter	Cal	S P
	Burlingame	Cal	S P
	Burlington	Wash	G N
	Burnett	Cal	S P
	Burnett	Cal	L A T
	Burnett	Wash	N P
	Burnham	Cal	S F & S J V
910	Burton	B C	C P
	Busbey's Spur	Wash	N P
	Butler	Cal	S P
	Betteville	Ore	O R & N
	Buttonwillow	Cal	S P
	Byron	Cal	S P
	Byron	Wash	N P
	Cabazon	Cal	S P
	Cable	Cal	S P S Fe Pac
	Cachise	Ariz	S P
	Cactus	Cal	S P
	Cadanassa	Cal	S P
	Cadiz	Cal	S Fe Pac
	Cajon	Cal	So Cal
	Calabasas	Ariz	S P
	Calahan	Ore	S P
	Caldwell	Ida	O S L
	Caliente	Cal	S P S Fe Pac
	Califa	Cal	S P
	Cal. Powder Works	Cal	S P
	Calispel	Ida	N P
	C., R. & M. S. Co. Siding	Cal	S P
	Calistoga	Cal	S P

	Station.		Location (road).
	Garvanza	Cal	L A T So Cal
	Gaston	Ore	S P
	Gate City	Wash	N P
	Gately	Cal	S F & S J V
	Gates	Ore	C & E
	Gaynor	Wash	G N
	Gazelle	Cal	S P
	Gelston	Cal	J P
	Gem	Ida	N P O R & N
	Genesse	Ida	N P
	Gerevra	Cal	S P
	Germantown	Cal	S P
	Geronimo	Ariz	G V, G & N
	Gervais	Ore	S P
	Getchell	Wash	N P
	Geyserville	Cal	C N-W
	Giant	Cal	S P
	Giantoak	Cal	S P
	Gibbon	Wash	N P
	Gibraltar	Wash	P S Pts
936	Gibson	Wash	P S Pts
	Gibsons	Ore	C S
	Gig Harbor	Wash	P S Pts
	Giglings	Cal	S P
	Gila Bend	Ariz	S P
	Gila City	Ariz	S P
	Gillespie	Cal	S P
	Gilliam	Wash	W & C R
	Gillies	Wash	N P
	Gillis	Cal	S F & S J V
	Gillis	Nev	C & C
	Gilpin	B C	C P
	Gilroy	Cal	S P
	Girard	Cal	S S Fe Pac
	Girvan	Cal	S P
	Glade	Wash	N P
	Gladwin	B C	C P
	Gladysta	Cal	So Cal
	Glamis	Cal	S P
	Gleed	Ariz	S Fe Pac
	Glenbrook	Ore	S P
	Glendale	Ariz	S F P & P
	Glendale	Cal	L A T
	Glendale	Ore	S P
	Glendale	Wash	O R & N

	Station.		Location (road).
	Glendale Junction	Cal	L A T
937	Glendora	Cal	So Cal
	Glen Ellen	Cal	S P
	Glenwood	Cal	S P
	Glenwood	Wash	O R & N
	Globe	Ariz	G V, G & N
	*F*loster	Cal	S P
	Goat Fell	B C	C P
	Globe	Ore	N P O R & N
	Golconda	Nev	S P
	Gold Bar	Wash	G N
	Gold Creek	B C	C P
	Gold Hill	Nev	V & T
	Gold Hill	Ore	S P
	Gold Run	Cal	S P
	Golden Crown Mine	B C	C P
	Goldtree	Cal	S P
	Goleta	Cal	S P
	Goltra	Ore	S P
	Golzoles	Cal	S P
	Goodyear	Cal	S P
	Gordon	Cal	S P
	Gosford	Cal	S P
	Goshen	Ore	S P
	Goshen	Wash	B B & B C
	Goshen Junction	Cal	S P
	Goulden	Cal	S P
	Govan	Wash	N P
	Grace	Wash	N P
938	Granada	Cal	S P
	Grand Central Spur	Ariz	S P
	Grand Forks	B C	C P
	Grand Mound	Wash	N P
	Grand Terrace	Cal	S P
	Grand View	Ariz	S F P & P
	Grand View	Ore	W & C R
	Grange City	Wash	O R & N
	Granger	Ore	C & E
	Grangers	Cal	S P
	Granite	Ariz	S F P & P
	Granite	B C	C P
	Granite	Ida	O R & N
	Granite	Ore	S P
	Granite Hill	Ida	N P
	Granite Point	Nev	S P
	Granite Point	Wash	O R & N
	Grant	Cal	S N-W

	Station.		Location (road).
	Grants	Ore	O R & N
	Grant's Pass	Ore	S P
	Grassmere	Wash	G N
	Grass Valley	Cal	N C N-G
	Gravel Pit	Cal	S P
	Graves	Cal	S P
	Green	Ore	S P
	Greenleaf	Cal	S F & S J V
	Greenwood	B C	C P
939	Greenwood	Cal	S P
	Greenwood Gravel Pit	Cal	S P
	Gregory	Ore	S P
	Greystone	Cal	S P
	Gridley	Cal	S P
	Griffin Lake	B C	C P
	Grotto	Wash	G N
	Grouse	Ida	N P
	Grover	Cal	S P
	Guadaloupe	Cal	S P
	Guasti's Spur	Cal	S P
	Guemes	Wash	P S Pts
	Guernesville	Cal	C N-W
	Guernsey	Cal	S F & S J V
	Guinda	Cal	S P
	Gustine	Cal	S P
	Gutelius	B C	C P
	Guy	Wash	O R & N
	Hackberry	Ariz	S Fe Pac
	Hadleys	Wash	O R & N
	Hafed	Nev	S P
	Hagerman	Cal	S F & S J V
	Haines	Ore	O R & N
	Haines Spur	Cal	S P
	Halconera	Cal	S P
	Haycuon	B C	C P
	Hall	B C	N & F S
	Halleck	Nev	S P
940	Hall's	Cal	S P
	Halsey	Ore	S P
	Halstead	Ore	C & E
	Halvern	Cal	S P
	Hamilton	Wash	G N
	Hammil	Cal	C & C
	Hammond	B C	C P
	Hampton	Wash	B B & B C
	Bancock	Ariz	S Fe Pac
	Haney	B C	C P

	Station.		Location (road).
	Hanford	Cal	S F & S J V S P
	Happy Valley	Wash	G N
	Hardwick	Cal	S P
	Hardy	Ariz	S Fe Pac
	Hare	Ore	S P
	Harold	Cal	S P
	Harper	Cal	S P
	Harqua Hala	Ariz	S F P & P
	Harrington	Cal	S P
	Harrington	Wash	G N
	Harris	Ore	C & E
	Harrisburg	Ore	O R & N S P
	Harrison	B C	C P
	Harrison	Ore	S P
	Harrison	Ida	O R & N
	Harriston	Wash	N P
	Harrold	Cal	S F & S J V
	Hartford Junction	B C	C P
941	Hartley	Cal	S P
	Hartleys	Cal	S P
	Hartine	Wash	N P
	Harts Spur	Cal	S P
	Haslem's Siding	B C	C P
	Hastings	B C	C P
	Hathaway Ave	Cal	S P
	Hatton	Wash	N P
	Hauser Junction	Ida	N P
	Havanna	Ore	O R & N
	Havel	Cal	S P
	Haviland	Ariz	S Fe Pac
	Hawley	Cal	S D C & E
	Hawthorne	Nev	C & C
	Hay	Wash	O R & N
	Hay Canon	Ore	C S
	Hay Canon Junction	Ore	C S
	Hays Spur	Cal	S P
	Hayes	Wash	N P
	Haynes	Ore	O R & N
	Hay Ranch	Nev	E & P
	Hayward	Cal	S P
	Haywards	Nev	V & T
	Hazelmere	B C	G N
	Healdsburg	Cal	C N-W
	Hearst	Cal	S P
	Heaton	Ariz	S P
	Hecla	Ariz	S P

	Station.		Location (road).
	Hector	Cal	S Fe Pac
942	Heinlen	Cal	S P
	Helene	Cal	So Cal
	Helena	Nev	N C
	Helisma	Cal	S P
	Heliz	Ore	W & C R
	Hemit	Cal	So Cal
	Hemme	Cal	S P
	Henderson	Ore	S P
	Hendryx	B C	C P
	Heppner	Ore	O R & N
	Heppner Junction	Ore	O R & N
	Herbert	Cal	S P
	Hercules	Cal	S P
	Herdlyn	Cal	S P
	Herndon	Cal	S P
	Herndon Gravel Pit	Cal	S P
	Herrin	Nev	S P
	Herrman	Ore	S P
	Hershey	Cal	S P
	Herstin	Nev	S P
	Hesperia	Cal	So Cal
	Hiawatha	Cal	S Fe Pac
	Hibbard	Ariz	S Fe Pac
	Hickman	Cal	S P
	High Grove	Cal	S P
	Highgrove	Cal	So Cal
	Highland	Cal	So Cal
943	Highland	Wash	G N
	Highland Junction	Cal	So Cal
	Hilgard	Ore	O R & N
	Hillhurst	Wash	N P
	Hills	B C	C P
	Hillsboro	Ore	S P
	Hillsdale	Cal	S P
	Hillsdale	Ore	W & C R
	Hillsdale	Ariz	S F P & P
	Hilo	Cal	S P
	Hinda	Cal	S P
	Hinckley	Cal	S Fe Pac
	Hite	Wash	N P
	Hobart	Cal	L A T
	Hobart	Cal	So Cal
	Hobson	Ariz	S Fe Pac
	Hock Farm	Cal	S P
	Holborn	Nev	S P
	Holbrook	Ariz	S Fe Pac
	Holbrook	Ore	N P

	Station.		Location (road).
	Holcomb	Wash	N P
	Holden	Cal	S P
	Holland	Wash	O R & N
	Hollister	Cal	S P
	Holmes	Ore	S P
	Holmes Spur	Wash	N P
	Home Junction	Cal	S P
944	Homer	Cal	S Fe Pac
	Homestead	Cal	S P
	Honby	Cal	S P
	Honcut	Cal	S P
	Honeymans	Wash	N P
	Hood River	Ore	O R & N
	Hooker	Cal	S P
	Hookston	Cal	S P
	Hooper	Wash	O R & N
	Hope	B C	C P
	Hopevale	Cal	S P
	Hopland	Cal	C N-W
	Hoquiam	Wash	N P
	Hornbrook	Cal	S P
	Horse Shoe	Ariz	U V & P
	Hot Lake	Ore	O R & N
	Hot Springs Jct	Ariz	S F P & P
	Hot Springs	Nev	S P
	Hot Springs	Wash	N P
	Houck	Ariz	S Fe Pac
	Houlton	Ore	N P
	Howard's	Cal	N P C
	Howell	Ida	N P
	Hoyt	Cal	S P
	Huachuca	Ariz	S P
	Hualapai	Ariz	S Fe Pac
	Hubbard	Ore	S P
945	Haffakers	Nev	V & T
	Hughson	Cal	S F & S J V
	Hugo	Ore	S P
	Humblodt	Nev	S P
	Humphreys	Cal	S P
	Hunt	Cal	S P
	Huntington	Ore	O R & N O S L
	Huntley	Cal	S F & S J V
	Hunts	Wash	N P
	Huntsville	Wash	O R & N W & C R
	Hurd	Cal	S F & S J V
	Huron	Ariz	P & E

	Station.		Location (road).
	Huron	Cal	S P
	Huron	Ore	O R & N
	Hyde Park	Cal	L A T
	Hynes	Cal	L A T
	Ibex	Cal	S Fe Pac
	Iveland	Cal	S P
	Idlewild	Cal	S P
	Idlewold	Wash	B B & E
	Igerna	Cal	S P
	Igancio	Cal	C N-W
	Ilia	Wash	O R & N
	Ilmon	Cal	S P S Fe Pac
	Imbler	Ore	O R & N
946	Imlay	Nev	S P
	Imola	Cal	S P
	Independence	Ore	S P O R & N
	Index	Wash	G N
	Indio	Cal	S P
	Industrial School	Cal	S P
	Ingleside	Cal	S P
	Inglewood	Cal	So Cal
	Ingomar	Cal	S P
	Inman & Paulson	Ore	S P
	Interbay	Wash	N P G N
	Ione	Cal	S P
	Ione	Ore	O R & N
	Ione	Wash	N P
	Irby	Wash	G N
	Irine	Ariz	S P
	Iris	Cal	S P
	Irondale	Wash	P S Pts
	Iron Point	Nev	S P
	Iron Springs	Ariz	S F P & P
	Irrigosa	Cal	S P
	Irving	Ore	S P
	Irvine	Cal	So Cal
	Irvington	Cal	S P
	Irvinville	Ore	S P
	Irwindale	Cal	S P
947	Isadoar	Ore	S P
	Island City	Ore	O R & N
	Ivalon	Ariz	S P
	Ivesta	Cal	S P
	Ivrea	Cal	S P
	Ivy	Cal	S P

Station.		Location (road).
Jacksonville	Ore	R R V
Jaffray	B C	C P
Jamesan	Cal	S P
Jamestown	Cal	S Ry of C
Jasmin	Cal	S P
Jastro	Cal	S F & S J V
Java	Cal	S Fe Pac
Jaynes	Ariz	S P
Jefferson	Ore	S P
Jerome	Ariz	U V & P
Jerome	Cal	So Cal
Jerome Junction	Ariz	U V & P S F P & P
Jewetta	Cal	S P
Joel	Ida	N P
Johannesburg	Cal	R Ry
John Day's	Ore	O R & N
Johnson's	Wash	N P
Jones' Warehouse Sp.	Cal	S P
Joseph City	Ariz	S Fe Pac
Juliaetta	Ida	N P
Junction	Cal	C N-W
948 Junction City	Ore	S P
Juniper	Ore	O R & N
Kadmon	Ariz	S P
Kalama	Wash	N P O R & N
Kamela	Ore	O R & N
Kamiche	Wash	P S Pts
Kamloops	B C	C P
Kanaka	B C	C P
Kanaskat	Wash	N P
Kane	Wash	N P
Kangley	Wash	N P
Kaslo	B C	C P
Kaster	Ariz	S Fe Pac
Kaweah	Cal	S P
Kearney	Cal	S P
Keefers	B C	C P
Keeler	Cal	C & C
Keenbrook	Cal	So Cal
Keene	Cal	S P S Fe Pac
Keith	Wash	N P
Kellogg	Ida	O R & N
Kelley's Bar	Wash	O R & N
Keely's Spur	Wash	N P
Kelowna	B C	C P

	Station.		Location (road).
	Don Luiz	Ariz	A & S E
	Donner's Ice Co	Cal	S P
925	Don Pedro	Cal	S Ry of C
	Doris	Cal	S P
	Dos Palos	Cal	S P
	Doty	Wash	N P
	Doud	Cal	S P
	Dougherty	Cal	S P
	Douglas	B C	G N
	Douglass	Ore	O R & N
	Douglas-	Ore	S P
	Douty	Wash	N P
	Downey	Cal	S P
	Downey Avenue	Cal	So Cal L A T
	Downing	Ore	O R & N
	Downs	Ore	S P
	Doyle	Cal	N–C–Or
	Dragoon	Ariz	S P
	Dragoon	Wash	S F & N
	Drain	Ore	S P
	Drake	Ariz	S Fe Pac
	Drawbridge	Cal	S P
	Drew	Cal	So Cal
	Dreyfus Spur	Cal	S P
	Drury	Wash	G N
	Dryad	Wash	N P
	Dry Camp	Cal	S P
	Dry Creek	Wash	W & C R
926	Drylyn	Cal	S P
	Drynock	B C	C P
	Duarte	Cal	S P
	Ducks	B C	C P
	Dudley	Wash	N P
	Dugan	Cal	S P
	Duncan Mills	Cal	N P C
	Dundee	Cal	S P
	Dundee Junction	Ore	S P
	Dunnigan	Cal	S P
	Dunsmuir	Cal	S P
	Durham	Cal	S P
	Durkee	Ore	O R & N
	Durmid	Cal	S P
	Dutch Flat	Cal	S P
	Duval	Ariz	S P
	Eagle Cliff	Wash	O R & N
	Eagle Gorge	Wash	N P
	Earls	Cal	S P

	Station.		Location (road).
	East Alhambra	Cal	S P
	East Berkeley	Cal	S P
	Eastbern	Cal	S P So Cal
	East Etiwanda	Cal	So Cal
	East Highlands	Cal	So Cal
	Eastland	Ore	O R & N
	Eastman	Wash	W & C R
927	East Oakland	Cal	S P
	Easton	Wash	N P
	East San Pedro	Cal	L A T
	East Spokane	Wash	G N O R & N
	Eblis	Cal	S P
	Ebro	Cal	S P
	Eccles Spur	Cal	S P
	Echo	Cal	C N-W
	Echo	Ore	O R & N
	Eckley	Cal	S P
	Eddyville	Ore	C & E
	Eden	Wash	N P
	Eden Vale	Cal	S P
	Edgecomb	Wash	N P
	Edgewater	Wash	N P
	Edgewood	Cal	S P
	Edna	Cal	S P
	Edson	Cal	S Fe Pac
	Edwall	Wash	G N
	Edwall	Cal	S P
	Egan	Cal	So Cal
	Eggers Spur	Cal	S P
	Eglon	Nev	S P
	Eglon Spur	Nev	S P
	Eholt	B C	C P
	Ehpratta	Wash	G N
928	Ehrlich	Wash	N P
	Elayon	Cal	S P
	Elberton	Wash	O R & N
	Alburz	Nev	S P
	El Cajon	Cal	S D C & E
	El Casco	Cal	S P
	El Casco Gravel Pit	Cal	S P
	El Dorado	Cal	S P
	Elgin	Ariz	S P
	Elgin	Ore	O R & N
	Elk City	Ore	C & E
	Elk Grove	Cal	S P
	Elk Rock	Ore	S P

	Station.	Location	(road).
	Elko	B C	C P
	Elko	Nev	S P
	Ellensburg	Wash	N P
	Ellicott	Cal	S P
	Ellis	Cal	S P
	Elma	Wash	N P
	Elmdale	Cal	S F & S J V
	Elmhurst	Cal	S P
	Elmira	Cal	S P
	Elmo	Cal	S F & S J V
	El Modena	Cal	S P
	Elmore	Cal	S P
	El Pinal	Cal	S P
	El Robles	Cal	C N–W
929	Elsinore Junction	Cal	So Cal
	Altopia	Wash	N P
	El Toro	Cal	So Cal
	Elvas	Cal	S P
	Alvaton	Cal	S P
	El Verano	Cal	S P
	Elwood	Cal	S P
	Elwood	Wash	W & C R
	Ely	Cal	C N–W
	Elys	Cal	S P
	Emanuel	Cal	S P
	Emerald	Cal	S P
	Emery	Cal	S P
	Emery Spur	Ida	N P
	Emigrant Gap	Cal	S P
	Empire	Cal	S F & S J V
	Empire	Cal	S P
	Empire	Nev	V & T
	Encinitas	Cal	So Cal
	Encina	Ore	O R & N
	Encino	Cal	S P
	Encke	Nev	S P
	Enderby	B C	C P
	Endicott	Wash	O R & N
	Ennis Siding	Wash	O R & N
	Ensign	Cal	S P
	Enterprise	B C	C P
	Enterprise	Wash	G N
	Enumelaw	Wash	N P
930	Eric	Cal	S P S Fe Pac
	Erie	B C	N & F S
	Escalon	Cal	S F & S J
	Escondido	Cal	So Cal

	Station.		Location (road).
	Escondido Junction	Cal	So Cal
	Esmond	Ariz	S P
	Espanola	Wash	G N
	Esparto	Cal	S P
	Esperanza	Cal	So Cal
	Espinosa	Cal	S P
	Essex Ice House	Nev	S P
	E Street	Cal	So Cal
	Estrella	Ariz	S P
	Estudillo	Cal	S P
	Ethanac	Cal	So Cal
	Etiwa	Cal	S P
	Etiwanda	Cal	So Cal
	Eugene	Ore	S P
	Eureka	Wash	O R & N
	Eureka Harbor	Wash	P S Pts
	Eureka Junction	*W & C R*	
	Eureka	Wash	N P
	Eureka (Eureka Co)	Nev	E & P
	Eureka (Merrimac Ormsby Co.)	Nev	V & T
	Evans	Nev	E & P
	Evans	Wash	W & C R
	Everett Junction	Wash	N P
	Everson	Wash	B B & B C
931	Ewing	Cal	S P
	Exeter	Cal	S P
	Faber	Wash	G N
	Fahihn	Cal	S P
	Fairbank	Ariz	S P
	Fairfax	Cal	N P C
	Fairfax	Wash	N P
	Farifield	Wash	O R & N
	Fair Grounds	Ore	S P
	Fair Oaks	Cal	S P
	Fairview	Ariz	S Fe Pac
	Fairview	Cal	S A & N
	Fairview	Cal	C & L
	Fairview	Cal	S P
	Fairview	Ore	O R & N
	Falkner	Cal	S P
	Fallbrook	Cal	So Cal
	Fallons	Wash	N P
	Famoso	Cal	S P
	Farmersville	Cal	S P
	Farmington	Cal	S P
	Farmington	Wash	N P O R & N

	Station.		Location (road).
	Farrin	B C	C P
	Farwell	Cal	S P
	Felida	Wash	W & O
	Fellowz	Wash	N P
	Felton	Cal	S P
	Felton Junction	Cal	S P
932	Fenelon	Nev	S P
	Fenner	Cal	S Fe Pac
	Fernandez	Cal	S F & S J V
	Fernando	Cal	S P
	Ferndale	Wash	G N
	Vernie	B C	C P
	Fidalgo	Wash	G N
	Fife	B C	C P
	Felbert	Cal	S P
	Fillmore	Cal	S P
	Fingal	Cal	S P
	Finnell	Cal	S P
	Fir	Wash	G N
	Firebaugh	Cal	S P
	Fire Valley	B C	C P
	First View	Ariz	U V & P
	Fisherman	B C	C P
	Fisherton	Wash	O R & N
	Fitzhburg	Cal	S P
	Flagstaff	Ariz	S Fe Pac
	Fleming	Cal	S P
	Fleta	Cal	S P
	Fletcher	Wash	O R & N
	Flonellis	Cal	S P
	Florence	Cal	S P
	Florin	Cal	S P
933	Floriston	Cal	S P
	Flosden	Cal	S P
	Flowing Well	Cal	S P
	Flowing Well Gravel Pit	Cal	S P
	Floyd	Cal	S P
	Folsom	Cal	S P
	Folsom	Wash	N P
	Ford	Ore	S P
	Forest Grove	Cal	S P
	Forest Grove	Ore	S P
	Forest Lake	Cal	S P
	Forestville	Cal	C N-W
	Forsey	Cal	S P
	Fort Robinson	Cal	S D C & E
	Fort Steele Junction	B C	C P

	Station.		Location (road).
	Fort Stevens	Ore	A & C O R & N
	Fort Thomas	Ariz	G V, G & N
	Fortuna	Cal	S P
	Fort Wright	Wash	G N
	Fosettis	Cal	S P
	Foster	Cal	S F C & E
	Fosters	Ore	O R & N
	Fountain	Cal	C N-W
	Fowler	Cal	S P
	Frani	Cal	S P S Fe Pac
	Frances	Wash	N P
934	Francis	Cal	C & C
	Franconia	Ariz	S Fe Pac
	Frank	Ore	S P
	Franktown	Nev	V & T
	Fredonia	Wash	G N
	Freeman	Wash	O R & N
	Freestone	Cal	N P C
	Fremont	Wash	N P
	French Camp	Cal	S P
	Fresno	Cal	S F & S J V S P
	Frink	Cal	S P
	Frisco	Ida	N P O R & N
	Fritz	B C	C P
	Froman	Ore	S P
	Fruitland	Cal	L A T
	Fruit Vale	Cal	S P
	Fruto	Cal	S P
	Fry	Ore	S P
	Fullerton	Cal	So Cal
	Fulton	Cal	C N-W
	Fulton	Ore	W & C R
	Fulton Heights	Ore	S P
	Fulton Wells	Cal	S P
	Galbreath	Ore	S P
	Galena	Wash	G N
	Gales.	Ore	S P
935	Galt	Cal	S P
	Garden Pass	Nev	E & P
	Garfield	Wash	N P O R & N
	Garfield Avenue	Cal	S P
	Garnsey	Cal	S P
	Garrison	Wash	O R & N

	Station.		Location (road).
	Kelso	Wash	N P
	Kendrick	Ida	N P
949	Kenilworth	Cal	C N-W
	Kenmore	Wash	N P
	Kennedy's	Wash	W & C R
	Kennet	Cal	S P
	Kennewick	Wash	N P
	Kent	Wash	N P
	Kenville	Cal	S P
	Kenwood	Cal	S P
	Kernell	Cal	S F & S J V
	Kern Junction	Cal	S Fe Pac
	Kester	Cal	S P
	Keswick	Cal	S P
	Keyes	Cal	S P
	Killian Junction	Ore	W & C R
	Kimberlina	Cal	S P
	Kimble	Cal	S P
	Kingman	Ariz	S Fe Pac
	Kingsburg	Cal	S P
	Kings City	Cal	S P
	Kingston	Ida	O R & N
	Kingston	Ore	C & E
	Kinkead	Nev	C & C
	Kiona	Wash	N P
	Kirkland	Ariz	S F P & P
	Kirkwood	Cal	S P
	Kimberley	B C	C P
	Kitchener	B C	C P
950	Kismet	Nev	S P
	Klamathon	Cal	S P
	Kline	Wash	N P
	Klinefelter	Cal	S Fe Pac
	Klink	Cal	S P
	Klondike	Cal	S Fe Pac
	Klondyke	Ariz	U V & P
	Klondyke	Ore	C S
	Knappa	Ore	O R & N
	Knappa	Ore	A & C R
	Knight's Landing	Cal	S P
	Knob	Cal	S P
	Knowles' Spur	Cal	S P
	Kodak	Nev	S P
	Kohler	Cal	S P
	Kokanee Creek	B C	C P
	Kootenay Landing	B C	C P
	Kramer	Cal	S Fe Pac
	Krewson	Ore	S P

Station.		Location (road).
Krug	Cal	S P
Krupp	Wash	G N
Kualt	B C	C P
Kuna	Ida	O S L
Kurand	Cal	S P
Kuskanock	B C	C P
Kyrene	Ariz	M & P & S R V
Lacon	Ida	O R & N
La Connor	Wash	P S Pts
La Costa	Cal	So Cal
La Cross	Cal	S P
La Crosse	Wash	O R & N
Ladner's Landing	B C	*B* C Pts
Ladoga	Nev.	S P
Ladrillo	Cal	So Cal
Lafayette	Ore	S P O R & N
La Grande	Ore	O R & N
Laguna	Cal	S P
Laidlaw	Ore	S P
La Jolla	Cal	S D P B & L J
Lake	Wash	N P
Lake Cassidy	Wash	N P
Lake Majella	Cal	S P
Lakeside	Cal	S D C & E
Lake View	Cal	S P
Lake View	Nev	V & T
Lakeview	Wash	N P
Lake View Junction	Cal	So Cal
Lakeville	Cal	C N-W
Lake Vineyard	Cal	S P
Lakmer	Cal	S P
Lamanda Park	Cal	So Cal
La Mesa	Cal	S D C & E
La Mirada	Cal	So Cal
Lamona	Wash	G N
Lancaster	Cal	S P
Land	Ariz	A & S E
Lander	Cal	S P
Lane	Ida	O R & N
Lang	Cal	S P
Lankershim(Los Angeles Co.)	Cal	S P
Lannan's Spur	Ida	O S L
La Patera	Cal	S P
La Presa	Cal	N C & Ot
Largo	Cal	C N-W
Lark Mead	Cal	S P
Larkin	B C	C P

	Station.		Location (road).
	Larkspur	Cal	N P C
	Larson	Wash	B D & E
	Las Casitas	Cal	L A T
	Las Flores	Cal	Sou Cal
	Las Palmas	Cal	S P
	Lastra	Nev	S P
	Latah	Wash	O R & N
	Latham	Ore	S P
	Lathrop	Cal	S P
	Laton	Cal	S F & S J V
	Latona	Wash	N P
	Latourell	Ore	O R & N
953	Latrobe	Cal	S P
	Laugenor	Cal	S P
	Laurel	Cal	S P
	Lavic	Cal	S Fe Pac
	Lawndale	Cal	S P
	Lawrence	Cal	S P
	Lawrence	Wash	N P
	Laws (Bishop's Station)	Cal	C & E
	Lawton	Cal	S P
	Leary	Wash	N P
	Leavenworth	Wash	G N
	Lebam	Wash	N P
	Lebanon	Ore	S P
	Ledimont	Ida	O R & N
	Lee (Walla Walla Co.)	Wash	W & C R
	Lee (Whitman Co.)	Wash	O R & N
	Leetr	Nev	S P
	Le Francs	Cal	S P
	Le Grand	Cal	S F & S J V
	Leland	Ore	S P
	Lemon	Cal	S P
	Lemon Creek	B C	C P
	Lemon Grove	Cal	S D C & E
	Lemoore	Cal	S P
	Leon	B C	C P
	Leon	Wash	N P
	Leona	Ore	S P
954	Leonard's	Cal	S P
	Lerdo	Cal	S P
	Lester	Wash	N P
	Lethent	Cal	S P
	Lewisburg	Ore	S P
	Lewis Junction	Nev	N C
	Lewis River	Wash	W & O
	Lewiston	Ida	N P O R & N

	Station.		Location (road).
	Lewiston R M Spur	Ida	N P
	Lexin	Cal	S P
	Lexington	Ore	O R & N
	Licking	Wash	N P
	Liegan Switch	Cal	N-C-Or
	Ligurta	Ariz	S P
	Lillis	Cal	S P
	Lima	Nev	S P
	Lime Kiln	Ore	O R & N
	Lime Kiln	Ore	S P
	Lincoln	Cal	S P
	Lincoln	Ore	O R & N
	Lincoln Park	Cal	So Cal
	Lind	Wash	N P
	Linda Rosa	Cal	So Cal
	Linda Vista	Cal	So Cal
	Lindsay	Cal	S P
	Lingard	Cal	S P
955	Linham	Cal	S P
	Linn	Ore	S P
	Linnton	Ore	N P
—	Linora	Cal	S P
	Lithia	Nev	S P
	Little Deer Park	B C	C P
	Little Rock	Wash	N P
	Live Oak	Cal	S P
	Livermore	Cal	S P
	Liverpool	B C	G N
	Liverpool	Ore	O R & N
	Livingston	Cal	S P
	Loara	Cal	S P
	Locans	Cal	S P
	Lockeford	Cal	S P
	Lodi	Cal	S P
	Logan	Cal	S P
	Logandale	Cal	S P
	Log Cabin Rapids	Wash	O R & N
	Lor Spur	Ida	N P
	Lois	Cal	S P
	Lokern	Cal	S P
	Loma Alta	Cal	So Cal
	Loma Linda	Cal	S P
	Loma Prieta	Cal	S P
	Lomo	Cal	S P
	Lone Pine Station	Cal	C & C
956	Lone Star	Cal	S F & SJ V
	Long Beach	Cal	L A T S P

	Station.		Location (road).
	Longs	Wash	O R & N W & C R
	Longs	Wash	N P
	Long Spur	Cal	S P
	Loomis	Cal	S P
	Loon Lake	Wash	S F & N
	Loray	Nev	S P
	Lordsburg	Cal	S P So Cal
	Lorenzo	Cal	S P
	Los Alamitos	Cal	S P
	Los Angeles Junction	Cal	So Cal
	Los Banos	Cal	S P
	Los Banos Gravel Pit		*Cal*
	Los Gatos	Cal	S P
	Los Gatos & San Jose Road	Cal	S P
	Los Gullicos	Cal	S P
	Los Medanos	Cal	S P
	Los Nietos	Cal	So Cal S P
	Los Robles	Cal	So Cal
	Lounibos Spur	Cal	S P
	Lovell	Cal	S F & S J V
	Lovell	Ida	O R & N
	Lovelock	Nev	S P
957	Lowdens	Wash	O R & N
	Lowson	Ore	S P
	Lucerne	Cal	S F & S J V
	Luckiamute	Ore	S P
	Ludlow	Cal	S Fe Pac
	Luning	Nev	C & C
	Luper	Ore	S P
	Lurline	Cal	C & L
	Luvita	Cal	S P
	Luzena	Ariz	S P
	Luzon	Cal	S P
	Luzon	Cal	S F & S J V
	Lyman	Cal	S P
	Lyman	Wash	G N
	Lynwood	Cal	S P
	Lyon	Nev	C & C
	Lyons	Ore	C & E
	Lyons	Wash	G N
	Lytton	B C	C P
	Lytton	Cal	C N-W
	Mabton	Wash	N P
	Mace	Ida	N P
	Machado	Cal	So Cal

	Station.		Location (road).
	Machias	Wash	N P
	Macks No. 2	Wash	N P
	Macleay	Ore	S P
	Macneil	Cal	S P
958	Macy	Cal	S P
	Madera	Cal	S P
	Madison	Cal	S P
	Madison	Wash	G N
	Madrone (Santa Clara county)	Cal	S P
	Madrone (Sonoma Co.)	Cal	C N-W
	Magra	Cal	S P
	Maiers Spur	Cal	S P
	Mail Dock	Cal	S P
	Maine	Ariz	S Fe Pac
	Malaga	Cal	S P
	Malaga	Wash	G N
	Mallard	Cal	S P
	Maltby	Cal	S F & S J V
	Maltby	Wash	N P
	Maltermoro	Cal	S P
	Malton	Cal	S P
	Mammoth Mine	Ida	N P
	Mammoth	Cal	S P
	Manchester	Ida	N P
	Manatton	Cal	L A T
	Manila	Ariz	S Fe Pac
	Manlove	Cal	S P
	Manteca	Cal	S P
	Manvel	Cal	C E
	Manzora	Ariz	S P
959	Maple	Cal	S P
	Maple Grove	B C	C P
	Mara	B C	C P
	Marble	Wash	S F & N
	Marcus	Wash	S F & N
	Marcuse	Cal	S P
	Marguerite	Cal	S F & S J V
	Maricopa	Ariz	S P
	Maricopa Tank	Ariz	S P
	Marinette	Ariz	S F P & P
	Marion	Ore	S P
	Markham	Wash	N P
	Mark West	Cal	C N-W
	Marlboro	Cal	S P
	Marmol	Cal	S P
	Marshall Junction	Wash	N P
	Marshall's	Cal	N P C

	Station.		Location (road).
	Marshland	Ore	A & C R
	Martin	Wash	N P
	Martins	Wash	W & O
	Martis	Cal	S P
	Martinez	Cal	S P
	Marysville	B C	C P
	Marysville	Wash	G N
	Mason	Nev	C & C
	Massicks	Ariz	S F P & P
	Matteo	Cal	So Cal
960	Mathewsville	Ariz	G V, G & N
	Matilija Junction	Cal	S P
	Maxim	Cal	C & C
	Maxwell	Cal	S P
	Maxwell (Lynn Co.)	Ore	C & E
	Maxwell (Umatilla Co.)	Ore	O R & N
	Mayborg	Cal	S P
	Mayer	Ariz	P & E
	Mayfield	Cal	S P
	Mayger	Ore	A & C R
	Mayhew	Cal	S P
	Maywood	Wash	N P
	McAvoy	Cal	S P
	McConnell	Cal	S P
	McConnico	Ariz	S Fe Pac
	McCormacks	Wash	N P
	McCormicks	B C	C P
	McCoy	Ore	S P
	McCoy's	Wash	N P
	McDonald	Wash	N P
	McDonalds	Ore	C S
	McDonalds Landing	B C	C P
	McGuigan	B C	K & S
	McIntosk	Wash	N P
	McKre	Ore	S P
	McKees	Wash	N P
	McKittrick	Cal	S P
	McLellan	Ariz	S Fe Pac
	McL——'s Spur	Cal	S P
961	McMahon's	Cal	S P
	McMillan	Wash	N P
	McMinnville	Ore	O R & N S P
	McMullin	Cal	S P
	McMurray	Wash	N P
	McNear	Cal	S P
	McPherson	Cal	S P
	Meacham	Ore	O R & N

	Station.		Location (road).
	Meath	Ariz	S F P & P
	Medford	Ore	S P
	Medical Lake	Wash	N P
	Meehan	Cal	S P
	Meeker (Pierce Co.)	Wash	N P
	Meeker (Whitman Co.)	Wash	O R & N
	Meganos	Cal	S F & S J V
	Mehrmans Spur	Cal	S P
	Mellen	Ariz	S Fe Pac
	Melitta	Cal	S P
	Melmont	Wash	N P
	Melrose	Cal	S P
	Mendota	Cal	S P
	Menifee	Cal	So Cal
	Menlo	Wash	N P
	Menlo Park	Cal	S P
	Menoken	Wash	O R & N
	Mentone	Cal	S P So Cal
962	Mezaro	Cal	S P
	Merced	Cal	S F & S J V S P
	Meridian	Ida	O S L
	Marienda	Cal	S P
	Merle	Cal	So Cal
	Merlin	Ore	S P
	Merrill	Wash	N P
	Merritt	Cal	S P
	Merritt	Wash	G N
	Mesa City	Ariz	M & P & S R V
	Mescal	Ariz	S P
	Mesmer	Cal	So Cal
	Mesquite	Cal	S P
	Metum	Wash	G N
	Metz	Cal	S P
	Mica	Wash	O R & N
	Middle Creek	Cal	S P
	Middleton	Ore	S P
	Midway	B C	C P
	Midway	Cal	S P
	Milan	Wash	G N
	Mile Point	B C	C P
	Miley	Cal	S F & S J V
	Mill 4	Ore	C & E
	Milbrae	Cal	S P
	Mill City	Nev	S P
963	Mill City	Ore	C & E
	Miller (Madera Co.)	Cal	S F & S J V

	Station.		Location (road).
	Miller (Mendocino Co.)	Cal	C N-W
	Millers	Cal	S P
	Millersburg	Ore	S P
	Millers Mill	Ore	S P
	Millers Spur	Cal	S P
	Millerton	Cal	N P C
	Millerton	Wash	B B & B C
	Milletts	Wash	N P
	Mills	Cal	C & L
	Mills	Cal	S P
	Mills Creek	Wash	N P
	Millsholm	Cal	S P
	Millside	B C	C P
	Mill Street	Cal	So Cal
	Mill Valley	Cal	N P C
	Milpitas	Cal	S P
	Milton	Cal	S P
	Milton	Ore	O R & N
	Milwaukee	Ore	S P
	Mima	Wash	N P
	Mineral	Nev	E & P
	Minneola	Cal	S Fe Pac
	Minto	Ore	C & E
	Minturn	Cal	S P
	Miraflores	Cal	S P
	Mirage	Nev	S P
964	Mirror Lake	Wash	B B & E
	Mission	Ore	O R & N
	Mission Junction	B C	C P
	Mockanema	Wash	O R & N
	Modesto	Cal	S P
	Mohawk Summit	Ariz	S P
	Mohler	Wash	G N
	Mojave	Cal	S Fe Pac S P
	Moleen	Nev	S P
	Molino	Cal	So Cal
	Mondovi	Wash	N P
	Monmouth	Ore	S P
	Monroe	Wash	G N
	Monrovia	Cal	S P So Cal
	Monson	Cal	S P
	Montague	Cal	S P
	Montalvo	Cal	S P
	Montborne	Wash	N P
	Monte	Cal	S P
	Montecito	Cal	S P

	Station.		Location (road).
	Montesano	Wash	N P
	Monte Vista	Cal	S P
	Montello	Nev	S P
	Monterey	Cal	S P
	Montezuma	Ariz	S P
	Montpelier	Cal	S P
965	Moore	Nev	S P
	Moqui	Ariz	S Fe Pac
	Morena	Cal	So Cal
	Moreno	Cal	S D C & E
	Morganhill	Cal	S P
	Morley	Cal	S P
	Morning	Ida	N P
	Moro	Ore	C S
	Morocojo	Cal	S P
	Morrano	Cal	S P
	Morrisey	B C	C P
	Morrison	Ore	C & E
	Morse	Wash	G N
	Mortmere	Cal	S P
	Moscow	Ida	N P O R & N
	Moscow	Wash	G N
	Mosher	Wash	G N
	Mosier	Ore	O R & N
	Mother Lode Mine	B C	C P
	Motor Junction	Cal	S P
	Mott	Cal	S P
	Moultons	Cal	S P
	Mound City	Cal	S P
	Mound House	Nev	V & T
	Mountain View	Cal	S P
	Mt Angel	Ore	S P
966	Mount Coffin	Wash	O R & N
	Mount Eden	Cal	S P
	Mt. Hope	Cal	S D C & E
	Mt. Hope	Nev	E & P
	Mt. Vernon	Wash	G N
	Mowry's	Cal	S P
	Moyie	B C	C P
	Muddy	Ore	S P
	Muir	Cal	S F & S J V
	Mukilteo	Wash	G N
	Mullan	Ida	N P O R & N
	Mullen	Ore	S P
	Multnomah Falls	Ore	O R & N
	Munkers	Ore	C & E

	Station.		Location (road).
	Murdock	Ore	O R & N
	Murphy's	Ore	S P
	Murray's	Wash	N P
	Murrays Spur	Ariz	S P
	Murrieta	Cal	So Cal
	Muscatel	Cal	S P
	Musina	Ariz	S P
	Myers Falls	Wash	S F & N
	Myoma	Cal	S P
	Myrtle Creek	Ore	S P
	Mystic	Cal	S P
	Nacio	Cal	S P
967	Nacimiento	Cal	S P
	Nada	Ariz	S F P & P
	Nadeau	Cal	L A T
	Nadeah park	Cal	S P So Cal
	Nairn	Cal	S P
	Nakusp	B C	C P
	Nampa	Ida	O S L
	Nanaimo	B C	P C Pts
	Napa	Cal	S P
	Napa Junction	Cal	S P
	Napavine	Wash	N P
	Narlon	Cal	S P
	Nashville	Ore	C & E
	Nason Creek	Wash	G N
	Natchez	Nev	S P
	Natoma	Cal	S P
	Natron	Ore	S P
	Navajo Springs	Ariz	S Fe Pac
	Naviska	Ariz	S P
	Needles	Cal	S Fe Pac
	Nelson	B C	C P
	Nelson	Cal	S P
	Nelson	Ariz	S Fe Pac
	Nelson	B C	N & F S
	Nelson's	Wash	N P
	Neroly	Cal	S P
968	Neponset	Cal	S P
	Nevada City	Cal	N C N–G
	Nevada Dock	Cal	S P
	Nevills	Cal	S P
	New Almaden	Cal	S P
	Newmark	Cal	S P
	Newaukum	Wash	N P
	Newberg	Ore	S P
	Newberg or Rogers	Ore	O R & N

	Station.		Location (road).
	Newberry	Cal	S Fe Pac
	New Boston	Nev	C & C
	Newby's	Cal	S P
	Newcastle	Cal	S P
	New Denver	B C	C P
	New England Mills	Cal	S P
	Newell Creek	Cal	S P
	New Era	Ore	S P O R & N
	Newhall	Cal	S P
	Newman	Cal	S P
	Newmans	Wash	N P
	N M & A R R Jct	Ariz	S P
	N M & A R R Yard	Ariz	S P
	Newport	Cal	S A & N
	Newport	Wash	G N
	New Ramona	Cal	S P
	Newton	Ore	S P
	New Westminster	B C	P C Pts
	New York Bar	Wash	O R & N
969	Niag-ra	Ore	C & E
	Nichols	Ore	S P
	Nicomen	B C	C P
	Niles	Cal	S P
	Nippon	Wash	G N
	Nitro	Cal	S P
	Nobel	Cal	S P
	Nodine	Ore	O R & N
	Nogales	Ariz	S P N M & A
	Nolan	Ore	O R & N
	Nome	Cal	S P
	Nookechamp	Wash	N P
	Nooksack	Wash	N P
	Nord	Cal	S P
	Nordhoff	Cal	S P
	Norman	Cal	S P
	North Alhambra	Cal	S P
	North Bend	B C	C P
	Northam	Cal	So Cal
	North Cucamonga	Cal	So Cal
	North Fork	Ore	O R & N
	North Lapwai	Ida	N P
	North Ontario	Cal	So Cal
	North Pole	Ida	N P
	North Pomona	Cal	So Cal
	Northport	Wash	S F & N
970	North Powder	Ore	O R & N

	Station.		Location (road).
	North San Gabriel	Cal	S P
	North Sanitam	Ore	S P
	North Yakima	Wash	N P
	North Yamhill	Ore	S P
	Norton	Ore	O R & N
	Nortons	Ore	C & E
	Norwalk	Cal	S P
	Notch Hill	B C	C P
	Notus	Ida	O S L
	Novato	Cal	C N-W
	Nunez	Ariz	S P
	Nyssa	Ore	O S L
	Oak	Nev	E & P
	Oakdale	Cal	S P
	Oakesdale	Wash	N P O R & N
	Oak Harbor	Wash	P S Pts
	Oak Knoll	Cal	S P
	Oakland	Ore	S P
	Oakland, 14th Street	Cal	S P
	Oakland, Market St	Cal	S P
	Oakland Wharf	Cal	S P
	Oakley	Val	S F & S J V
	Oak Point	Wash	O R & N
	Oakshade	Cal	S P
	Oakview	Cal	S P
971	Oakville	Cal	S P
	Oakville	Wash	N P
	O'Brien's	Wash	N P
	Ocapos	Ariz	S P
	Occidental	Cal	S Ry of C
	Ocean Beach Spur	Cal	S P
	Oceano	Cal	S P
	Ocean Park	Cal	So Cal
	Oceanside	Cal	So Cal
	Ocean View	Cal	S P
	Ochoa	Ariz	S P
	Ocosta	Wash	N P
	Odessa	Cal	S F & S J V
	Odesa	Wash	G N
	Ogilby	Cal	S P
	Oil City	Cal	S P
	Ojai	Cal	S P
	Okanagon Landing	B C	C P
	Old Beach	Cal	S P
	Old Clements Spur	Cal	S P
	Old Felton	Cal	S P
	Old Mission	Cal	S P

	Station.		Location (road).
	Old Mission	Wash	G N
	Old's Ferry	Ida	O S L
	Old Spur	Cal	S P
	Old State Line	Cal	S P
	Old Town	Cal	S D P B & L J
972	Oleander	Cal	S F & S J V
	Olequa	Wash	N P
	Oleum	Cal	S P
	Olga	Ariz	S P
	Olinda	Cal	So Cal
	Olive	Cal	So Cal
	Olivewood	Cal	So Cal
	Olson	Ore	S P
	Olsons	Wash	O R & N
	Oneonta	Cal	N C & Ot
	Oneonta	Ore	O R & N
	Ontario	Cal	S P
	Ontario	Ore	O S L
	Opal	Cal	S P
	Ora	Cal	S P
	Orange	Cal	S P So Cal
	Orange Center	Cal	S P
	Orchard	Cal	S P
	Ordway	Cal	S P
	Oreana	Nev	S P
	Oregon City	Ore	O R & N S P
	Orel	Cal	S P
	Orillia	Wash	N P
	Orland	Cal	S P
	Ormus	Cal	S P
	Oro Grande	Cal	So Cal
973	Oroville	Cal	S P
	Orphan's Home	Cal	S P
	Orris	Cal	S P
	Ortega	Cal	S P
	Orting	Wash	N P
	Ortonville	Cal	S P
	Osage	Cal	S P
	Osborne	Ida	N P O R & N
	Osborne	Wash	W & C R
	Osino	Nev	S P
	Ostrander	Wash	N P
	Oswald	Cal	N P
	Oswego	Ore	S P
	Otay	Wash	N C & Ot

	Station.		Location (road).
	Otis	Wash	N P
	Ozalis	Wash	N P
	Ozalis	Cal	S P
	Oxnard	Cal	S P
	Pachappa	Cal	So Cal
	Pacific Av Alameda	Cal	S P
	Pacific Beach	——	S D P B & L J
	Pacific Grove	Cal	S P
	Pac Imp Co's Qy Spur	Cal	S P
	Pac Lumber Co's Spur	Cal	S P
	Pacific or Camp 16	Cal	S P
	Packard	Ariz	A & S E
974	Pacoima	Cal	S P
	Paha	Wash	N P
	Paige	Cal	S F & S J V
	Painted Rock	Ariz	S P
	Painters	Cal	L A T
	Pajaro	Cal	S P
	Palermo	Cal	S P
	Palisade	Nev	S P
	Palmdale	Cal	S P
	Palmer	Wash	N P
	Palm Springs	Cal	S P
	Palo Alto	Cal	S P
	Palouse	Wash	N P
	Pampa	Cal	S — / S Fe Pac
	Pampa	Wash	O R & N
	Pansy	Cal	S P
	Pantano	Ariz	S P
	Paper Mill	Ore	S P
	Paraffine	Cal	S P
	Park	Wash	B B & E
	Parker	Ore	S P
	Parker	Wash	N P
	Park St., Alameda	Cal	S P
	Parlier	Cal	O S L
	Parma	Ida	O S L
	Parsons	Cal	S P
	Pasadena	Cal	S P / So Cal
975	Pasco	Wash	N P
	Paso Robles	Cal	S P
	Paso Robles Gravel Pit Spur	Cal	S P
	Patata	Cal	S P
	Patterson	Cal	S F & S J V
	Patton	Cal	So Cal
	Paularino	Cal	S P

	Station.		Location (road).
	Paulsell	Cal	S Ry of C
	Poyette	Ida	O S L
	Payne Siding	B C	K & S
	Peachland	B C	C P
	Peach Springs	Ariz	S Fe Pac
	Peart	Cal	S P
	Pe Ell	Wash	N P
	Pembroke	Ariz	S P
	Penewawa	Wash	O R & N
	Pendleton	Ore	O R & N W & C R
	Pendleton Junction	Ore	O R & N
	Penitentiary	Ore	S P
	Peninger Spur	Ore	S P
	Penn Grove	Cal	C N-W
	Pennys	B C	C P
	Penrith	Wash	G N
	Penryn	Ore	S P
	Penticton	B C	C P
	Pensance	Ariz	S Fe Pac
	Peoria	Ore	O R & N
976	Peoria	Ariz	S F P & P
	Peral	Cal	S F & S J V
	Peralta	Ariz	S Fe Pac
	Perkins	Ariz	S Fe Pac
	Perris	Cal	So Cal
	Perry	Ore	O R & N
	Perrydale	Ore	S P
	Perry's	Cal	S P
	Peters	Cal	S P
	Pequop	Nev	S P
	Peshastin	Wash	G N
	Petaluma	Cal	G N
	Philamath	Ore	C & E
	Phœnix	Ariz	M & — & S R V S F P & P
	Phœnix	B C	C P
	Phœnix	Ore	S P
	Picacho (Pinal Co)	Ariz	S P
	Pickard	Wash	W & C R
	Piedmont	Ariz	S F P & P
	Pilchuck	Wash	N P
	Pillar Rock	Wash	O R & N
	Pilot Bay	B C	C P
	Pilot Knob	Cal	S P
	Pima	Ariz	G V G & N
	Pine	Nev	E & P
	Pineveta	Ariz	S Fe Pac

	Station.		Location (road).
977	Pinole	Cal	S P S F & S J V
	Pinta	Ariz	S Fe Pac
	Pintoresca	Cal	L A T
	Pioneer	Cal	S P
	Piru	Cal	S P
	Pisgah	Cal	S Fe Pac
	Pittsburg	Wash	N P
	Plute	Cal	S Fe Pac
	Plute	Nev	S P
	Pixley	Cal	S P
	Placerville	Cal	S P
	Plainview	Ore	S P
	Plano	Cal	S P
	Plantel	Cal	S P
	Plaza	Wash	N P
	Pleasanton	Cal	S P
	Pleasanton Brickyard	Cal	S P
	Pleasant Valley	Ore	O R & N
	Pleasant View	Wash	W & C R
	Plummer	Ida	O R & N
	Pluvius	Wash	N P
	Point Isabel	Cal	S P
	Point of Rocks (Tower No. 9)	Cal	S P
	Point Reyes	Cal	N P C
	Poland	Ariz	P & E
	Polaris	Cal	S P
978	Polita	Cal	C & C
	Polk	Ore	S P
	Pollasky	Cal	S P
	Pomeroy	Wash	O R & N
	Pomona	Cal	S P
	Pond	Cal	S P
	Pontiac	Wash	N P
	Porphyry	Cal	So Cal
	Portal	Cal	S F & S J V
	Port Costa	Cal	S P
	Porteous	B C	C P
	Porter	Wash	N P
	Porters	Ida	N P
	Porterville	Cal	S P
	Port Gamble	Wash	P S Pts
	Port Kells	B C	G N
	Port Los Angeles	Cal	S P
	Port Ludlow	Wash	P S Pts
	Port Madison	Wash	P S Pts
	Port Moody	B C	C P
	Porto Rico	B C	N & F S

	Station.		Location (road).
	Port Williams	Wash	P S Pts
	Posen	Cal	S P
	Post Falls	Ida	N P
	Potencia	Cal	So Cal
	Potlach Jct	Ida	N P
	Potter	Cal	S P
979	Pottery Spur	Cal	S P
	Pott's Spur	Ida	N P
	Powder Spur	Wash	N P
	Powder Switch	Ore	S P
	Powder Works	Cal	S P
	Powell	Ariz	S Fe Pac
	Prairie	Wash	N P
	Pratton	Cal	S P
	Pratum	Ore	S P
	Preble	Nev	S P
	Prenda	Cal	So Cal
	Prescott	Ariz	S F P & P
	Prescott (Pierce Co)	Wash	N P
	Prescott (Walla Walla County)	Wash	O R & N
	P & E Junction	Ariz	S F P & P
	Priceboro	Ore	S P
	Priest River	Ida	G N
	Prison Track	Nev	S P
	Proberta	Cal	S P
	Proctor	B C	C P
	Prosser	Wash	N P
	Prosser Creek	Cal	S P
	Providence	Wash	N P
	Puente	Cal	S P
	Puente Oil Siding	Cal	S P
	Pullman	Wash	N P O R & N
980	Pullman Junction	Wash	N P
	Pulp	Ore	S P
	Pumping Works	Cal	S P
	Punta Gorda Spur	Cal	S P
	Purdy	Cal	S E
	Purdy Switch	Nev	N–C–Or
	Puyallup	Wash	N P
	Puyallup River	Wash	N P
	Pyramid	Ariz	S P
	Pyramid	Ore	A & C R
	Queen	Nev	C & C
	Querino	Ariz	S Fe Pac
	Quincy	Ore	A & C R
	Quincy	Wash	G N

	Station.		Location (road).
	Quinns	Ore	O R & N
	Rabels	Wash	G N
	Racetrack	Cal	S P
	Racetrack Junction	Cal	S P
	Railroad Pass	Ariz	S P
	Raines	Nev	E & P
	Rainier	Ore	O R & N
	Rainier	Ore	A & C R
	Rainier	Wash	N P
	Raleigh	Ore	S P
	Ramirez	Cal	S P
	Ramona Hotel	Cal	S P
	Ramsey	Ida	N P
	Ramsgate	Ariz	S F P & P
981	Ranch House	Cal	So Cal
	Randsburg	Cal	R Ry
	Rathdrum	Ida	N P
	Ravenna	Cal	S P
	Ravenna	Wash	N P
	Ravenswood	Nev	N C
	Rawson	Cal	S P
	Raymond	Cal	So Cal S P
	Rayville	Wash	N P
	Read's Spur	Cal	S P
	Reardan	Wash	N P
	Red Bluff	Cal	S P
	Redding	Cal	S P
	Redlands	Cal	S P So Cal
	Redlands Junction	Cal	S P
	Redondo	Cal	So Cal
	Redondo June	Cal	So Cal
	Red Rock	Ariz	S P
	Redwood	Cal	S P
	Reedley	Cal	S F & S J V S P
	Reed's	Cal	S P
	Reed's Spur	Cal	S P
	Reedville	Ore	S P
	Reform School	Ore	S P
	Relief (Yakima Co)	Wash	N P
982	Relief (Columbia Co)	Wash	O R & N
	Remillard	Cal	S P
	Remnoy	Cal	S P
	Reno	Nev	S P
	Reseda	Cal	S P
	Reser's	Wash	W & C R

	Station.		Location (road.)
	Reservation	Wash	N P
	Reuben	Ore	S P
	Revelstoke	B C	C P
	Reynolds	Wash	N P
	Reynolds & Davies	Wash	N P
	Rex	Ore	S P
	Rhea	Ore	O R & N
	Rhodes	Nev	C & C
	Rialto	Cal	So Cal
	Rice	Ariz	G V G & N
	Rice Hill	Ore	S P
	Rice's Bar	Wash	O R & N
	Richardson	Wash	W & C R
	Richfield (Orange Co)	Cal	So Cal
	Richfield (Tehama Co)	Cal	S P
	Richland	Cal	So Cal
	Riddle	Ore	S P
	Ridgefield	Wash	W & O
	Rillito	Ariz	S P
	Rimlon	Cal	S P
	Rincon	Cal	S P
983	Rio Bravo	Cal	S P
	Riordan	Ariz	S Fe Pac
	Riparia	Wash	O R & N
	Ripon	Cal	S P
	Ritzville	Wash	N P
	Rivera	Cal	So Cal
	Riverbank	Cal	S P S F & S J V
	Riverdale	Ore	S P
	Riverside	Cal	S P So Cal
	Riverside	Ore	S P
	Riverside June	Cal	S P
	Riverside (Whitman Co)	Wash	O R & N
	Riverside (Walla Walla Co)	Wash	W C & R
	River Spur	Ore	S P
	Riverview	Cal	S D C & E
	Robla	Cal	S F & S J V
	Roche Harbor	Wash	P S Pts
	Rochester	Cal	S P So Cal
	Rochester	Wash	N P
	Rochlyn	Wash	N P
	Rock Butte	Ariz	S F F & P
	Rock Creek	Ore	S P
	Rock Creek	Wash	N P
	Rockford	Wash	O R & N

	Station		Location (road)
	Rock Island	B C	C P
964	Rock Island	Wash	G N
	Rocklin	Cal	S P
	Rockport	Wash	G N
	Rock Spur	Cal	S P
	Rocky Spur	Ariz	S P
	Rocky Point	Cal	S P
	Rodeo	Cal	S P
	Rodriguez	Cal	S Fe Pac
	Roeding	Cal	S P
	Rogers Spur	Ida	N P
	Rokeby	Nev	S P
	Rolinda	Cal	S P
	Rondl	Wash	N P
	Ronda	Cal	S P
	Rooster Rock	Ore	O R & N
	Rosalia	Wash	N P
	Rosamond	Cal	S P
	Roscoe	Cal	S P
	Roseburg	Ore	S P
	Rose Creek	Nev	S P
	Rosedale	Cal	S F & S J V
	Rosena	Cal	So Cal
	Roseville	Cal	S P
	Roslyn	Wash	N P
	Rosny	Nev	S P
	Rossland	B C	} C & R M } C P
965	Rosemoyne	Cal	L A T
	Roth	Cal	S P
	Rotha Prairie	Ore	S P
	Routier	Cal	S P
	Rowen	Cal	} S P } S Fe Pac
	Rowena	Ore	O R & N
	Rowland	Ore	S P
	Roy	Wash	N P
	Roy	Cal	S P
	Royal Spur	Wash	N P
	Royal City Spur	B C	B C Pts
	Roza	Wash	N P
	Rubottom's Spur	Cal	S P
	Ruby Creek	B C	C P
	Rucker	Cal	S P
	Ruckle	Ore	S P
	Ruddock	Cal	S P
	Rufo	Wash	W & C R
	Rumsey	Cal	S P

	Station.		Location (road).
	Ruskin	B C	C P
	Russ	Cal	S P
	Russel's	Cal	S P
	Rutherford	Cal	S P
	Ruthven	Cal	S P
	Rye Patch	Nev	S P
	Ryer	Cal	S P
	Ryndon	Nev	S P
986	Sacaton	Ariz	M & P & S R V
	Safford	Ariz	G V, G & N
	Saginaw	Ore	S P
	St Elmo	Cal	R Ry
	St Helena	Cal	S P
	St Helena	Ore	O R & N
	St Johns	Ore	O R & N
	St Johns	Wash	O R & N
	St Joseph	Ore	S P
	St Mary's	Ore	S P
	Salem	Ore	O R & N S P
	Sadida	Cal	S P
	Salinas	Cal	S P
	Salisbury	Cal	S P
	Salmo	B C	N & F-S
	Salmon Arm	B C	C P
	Salt Creek	Ore	S P
	Salton	Cal	S P
	Salvia	Cal	S P
	Salvia Gravel Pit	Cal	S P
	Samish	Wash	P S Pts
	Sampling Works	Ida	N P
	Samuel	Cal	S P
	San Anselmo	Cal	N P C
	San Ardo	Cal	S P
	San Bernardino	Cal	S P So Cal
987	San Bruno	Cal	S P
	San Buenaventura	Cal	S P
	San Carlos	Ariz	G V, G & N
	San Carlos	Cal	S P
	Sand Cut	Cal	S P S Fe Pac
	Sanders	Ariz	S Fe Pac
	Sanderson's Point	B C	C P
	San Dimas	Cal	So Cal S P
	Sandon	B C	K & S C P

Station		Location Month
Saint Saint	Cal	S P
Saint Sulpice	Cal	S P
Sandfields	Ariz	S P
San Gabriel	Cal	S P
San Gabriel Winery	Cal	S P
San Jacinto	Cal	N P C
San Jacinto	Cal	Sc Cal
San Joaquin Bridge	Cal	S P
San Juan	Cal	Sc Cal
San Juan	Wash	P S Pt
Sanger	Cal	S P
San Leandro	Cal	S P
San Lucas	Cal	S P
San Luis Obispo	Cal	S P
San Marcos	Cal	Sc Cal
San Martin	Cal	S P
San Martin	Cal	S P
1933 San Mateo	Cal	S P
San Miguel	Cal	S P
San Onofre	Cal	Sc Cal
San Pablo	Cal	S P S P & S J C
San Pedro	Cal	S P
San Pedro Wharf	Cal	S P
San Quentin	Cal	N P C
San Rafael	Cal	C N W N P C
San Ramon	Cal	S P
Sangerain	Cal	S P
San Simon	Ariz	S P
Santa Ana	Cal	S P Sc Cal
Santa Anita	Cal	Sc Cal
Santa Barbara	Cal	S P
Santa Clara	Cal	S P
Santa Cruz	Cal	S P
Santa Fe Springs	Cal	Sc Cal
Santa Margarita	Cal	S P
Santa Monica	Cal	S P Sc Cal
Santa Monica Canyon	Cal	S P
Santa Paula	Cal	S P
Santa Rosa	Cal	S P
Santee	Cal	S P C & E
Sapa	Nev	S P
Sapperton	B C	C P
1934 Sargents	Cal	S P
Sather	Cal	S P

Station		Location (road)
Saticoy	Cal	S P
Satsop	Wash	N P
Satus	Wash	N P
Saugus	Cal	S P
Saunders	Wash	N P
Sausalito	Cal	N P C
Sauterne	Cal	S P
Savanna	Cal	S P
Savonas	B C	C P
Saxe	Ore	O R & N
Saxon	Wash	N P
Sayward	B C	N & F S
Scappoose	Ore	N P
Schumann	Cal	S P
Schurz	Nev	C & C
Sciaronis Spur	Cal	S P
Scio	Ore	S P
Scio Junction	Ore	S P
Scotia	Wash	G N
Scott	Wash	N P
Sea Cliff	Cal	S P
Sealer	Cal	S P
Sear's Point	Cal	C N-W
Seaside	Cal	S P
Sebastopol	Cal	C N-W
Secret Town	Cal	S P
Sedan	Cal	S P
Sedro	Wash	G N
Sedrome Junction	Wash	G N
Selah	Wash	N P
Seligman	Ariz	S Fe Pac
Selfwood	Ore	O R & N
Selma	Cal	S P
Seltice	Wash	O R & N
Selwyn	Cal	So Cal
Semiahmoo	Wash	P S Pts
Seminary Park	Cal	S P
Sentinel	Ariz	S P
Sentous	Cal	S P
Sepulveda	Cal	S P
Serena	Cal	S P
Serrano	Cal	S P
Sesma	Cal	S P
Sespe	Cal	S P
Seuferts	Ore	O R & N
Seven Mile Point	B C	C P
Shady Run	Cal	S P
Shafter	Cal	S F & S J V

	Station.		Location (road).
	Sharon	Cal	S F & S J V
	Shasta Retreat	Cal	S P
	Shasta Springs	Cal	S P
	Shattuck	Ore	S P
991	Shaw	Ore	S P
	Shawnee	Wash	O R & N
	Shedd	Ore	S P
	Sheep Creek	B C	C & R M
	Shelburn	Ore	S P
	Shellville	Cal	S P
	Shellville Junction	Cal	S P
	Shelton	Wash	P S Pts
	Sheridan	Cal	S P
	Sheridan	Ida	N P
	Sheridan	Ore	S P
	Sheridan Junction	Ore	S P
	Sherlock	Wash	N P
	Sherwood	Ore	S P
	Shields	B C	C P
	Shingle Springs	Cal	S P
	Cholim	Cal	S P
	Sholto	B C	C P
	Shorb	Cal	S P
	Shore's	Wash	N P
	Shoshone	Nev	S P
	Shrewsbury	Wash	N P
	Shuswax	B C	C P
	Siam	Cal	S Fe Pac
	Siberia	Cal	S Fe Pac
	Sibyl	Ariz	S P
	Sicamous Junction	B C	C P
992	*Sicamous Junction*	*B C*	*C P*
	Sidney	Ore	O R & N
	Sierra Vista	Cal	S P
	Signal	Ariz	S Fe Pac
	Silsby	Cal	S P
	Silvana	Wash	G N
	Silver Beach	Wash	B B & E
	Silver Creek	Nev	N C
	Silverton	B C	C P
	Silverton	Ore	S P
	Simcoe	Wash	N P
	Simons	Ore	O R & N
	Simpson	Ore	S P
	Simpson	Wash	N P
	Sims	Cal	S P
	Sinks	Ore	C S
	Sirdar	B C	C P

	Station.		Location (road).
	Siskiyou	Ore	S P
	Sisson	Cal	S P
	Sites	Cal	C & L
	Sitrs	Ore	S P
	Skiddaddle Creek	Ore	S P
	Skamokawa	Wash	O R & N
	Skull Valley	Ariz	S F P & P
	Skykomish	Wash	G N
	Slater	Wash	N P
	Slauson	Cal	So Cal
993	Slocum City	B C	C P
	Slocum Junction	B C	C P
	Smelter Junction	B C	C P
	Smelter Spur	Ariz	S P
	Smeltzer	Cal	S A & N
	Smithfield	Ore	S P
	Smith	Cal	S P
	Smith Creek	Ore	S P
	Smithson	Cal	S P
	Smurr	Ariz	S P
	Snowdon	Ore	S P
	Snyder	Cal	S P
	Sobrante	Cal	S P
	Sobre Vista	Cal	S P
	Soda Springs	Cal	S P
	Sodaville	Nev	C & C
	Soldiers' Home	Cal	S P
	Soledad	Cal	S P
	Solita	Cal	S F & S J V
	Solomonville	Ariz	G V, G & N
	Sonna	Ida	O S L
	Sonoita	Ariz	S P
	Sonoma	Cal	C N-W
	Sonora	Cal	S Ry of C
	Sopenah	Wash	N P
	Sorrento	Cal	So Cal
	Soto	Cal	S P
994	Soudan	Cal	S P
	South Aberdeen	Wash	N P
	South Ainsworth	Wash	N P
	South Arbor	Wash	N P
	South Bend	Wash	N P
	South Clearwater	Cal	L A T
	South Portland	Ore	S P
	South Etiwanda	Cal	S P
	South Fork	B C	K & S
	South Pasadena	Cal	S P So Cal L A T

	Station.		Location (road).
	South Pomona	Cal	S P
	South Portland	Ore	S P
	South Prairie	Wash	N P
	South San Francisco	Cal	S P
	South San Leandro	Cal	S P
	South Tacoma	Wash	N P
	South Vallejo	Cal	S P
	South Westminster	B C	B C Pts
	Spadra	Cal	S P
	Spangle	Wash	N P
	Spatsum	B C	C P
	Spencer's Bridge	B C	C P
	Spence's	Cal	S P
	Spicer	Ore	S P
	Spofford	Ore	O R & N
	Spokane	Wash	G N N P O R & N
995	Sprague	Wash	N P
	Spreckels	Cal	S P
	Sreckels Junction	Cal	S P
	Springbrook	Ore	S P
	Spring Creek	Wash	W & C R
	Springdale	Wash	S F & N
	Stringer	Wash	N P
	Springfield	Ore	S P
	Spring Valley (San Diego Co.)	Cal	S D C & E
	Spring Valley (San Mateo Co.)	Cal	S P
	Sproules	B C	K & S
	Spur	Nev	S P
	Spuzzem	B C	C P
	Squally Hook	Ore	O R & N
	Staley	Wash	N P
	Stampede	Wash	N P
	Standard Oil Co.	Cal	S P
	Standard Oil Co. No. 1	Cal	S P
	Standard Oil Co. No. 2	Cal	S P
	Standard Soap Co.	Cal	S P
	Stanfield	Wash	W & C R
	Stanford	Cal	S P
	Stanley	Cal	S P
	Stanton	Ore	W & C R
	Stanwix	Ariz	S P
996	Stanwood	Wash	G N
	Starbuck	Wash	O R & N
	Star Mill	Wash	N P

	Station.		Location (road).
	State Line	Nev	C & C
	Steamboat	Nev	V & T
	Stearns	Ore	S P
	Steel Spur	Ore	O R & N
	Steens Spur	Cal	S P
	Stege	Cal	S P
	Steilacoom	Wash	P S Pts
	Steinman	Cal	S P
	Stella	Cal	S F & S J V
	Stella	Wash	O R & N
	Steptoe	Wash	O R & N
	Stevens	Cal	S P
	Stewart	Ore	S P
	Stockham	Ariz	S P
	Stockton Wharf	Cal	S P
	Stock Yards	Cal	S P
	Stokes	Ore	O R & N
	Stone House	Nev	S P
	Stone House	Nev	E & P
	Storey	Cal	S F & S J V
	Stratford	Wash	G N
	Stuck Junction	Wash	N P
	Studebaker	Cal	S P
	Studebaker Spur	Ore	S P
997	Sugar Pine Door & Lumber Co	Ore	S P
	Suisun	Cal	S P
	Sullivan	Cal	S P S Fe Pac
	Sully	Ore	S P
	Sultan	Wash	G N
	Sumas	Wash	N P B B & B C
	Summerland	Cal	S P
	Summit.	Ariz	U V & P S F P & P
	Summit	B C	N & F S
	Summit (Nevada Co)	Cal	S P
	Summit (San Bernardino Co)	Cal	So Cal
	Summit (Esmeralda Co)	Nev	C & C
	Summit (Eureka Co)	Nev	E & P
	Summit (Benton Co)	Ore	C & E
	Summit (Wasco Co)	Ore	O R & N
	Summit	Ore	C S
	Summit (Chehalis Co)	Wash	N P
	Summit (Skagit Co)	Wash	N P
	Summit	Wash	O R & N

	Station.		Location (road).
	Summit (Walla Walla Co)	Wash	W & C R
	Summit Siding	B C	C P
	Summit Spur	Ariz	G V, G & N
	Summit Switch	Cal	S P S Fe Pac
998	Sumner	Wash	N P
	Sunnyside	Cal	N C & Ot
	Sunnyside	Wash	B B & E
	Sunny Slope	Cal	S P
	Sunol	Cal	S P
	Sunset	Ariz	S Fe Pac
	Sunset	Ida	N P
	Sunset	Wash	N P
	Sunset	Wash	O R & N
	Sunshine	Wash	N P
	Supai	Ariz	S Fe Pac
	Surf	Cal	S P
	Surrey	Cal	S P
	Suscol	Cal	S P
	Suver	Ore	S P
	Svensen	Ore	A & C R
	Swensea	B C	C P
	Swansea	Cal	C & C
	Sweet Briar Camp	Cal	S P
	Sweetwater	Ariz	S P
	Sweetwater Dam	Cal	N C & Ot
	Swingle	Cal	S P
	Switzerland	Ore	S P
	Sylmar	Cal	S P
	Table Creek	Ore	S P
	Tacna	Ariz	S P
	Tagus	Cal	S P
999	Talbot	Cal	S P
	Talent	Ore	S P
	Tallman	Ore	S P
	Tamarack	Cal	S P
	Tam O'Shanter	B C	C P
	Tancred	Cal	S P
	Tangair	Cal	S P
	Tangent	Ore	S P
	Tank Siding	Cal	S P
	Tappen Siding	B C	S P
	Tarpeys Spur	Cal	S P
	Tartron	Ariz	S P
	Taurusa	Cal	S P
	Teal	Cal	S P
	Teanaway	Wash	N P
	Tacoma	Nev	S P

	Station.		Location (road).
	Tehachapi	Cal	S P S Fe Pac
	Tehama	Cal	S P
	Tejunga	Cal	S P
	Tekoa	Wash	O R & N
	Telocasset	Ore	O R & N
	Temecula	Cal	So Cal
	Tempe	Ariz	M & P & S R V
	Templeton	Cal	S P
	Tenino	Wash	N P
	Tennant's	Cal	S P
1000	Terminal Island	Cal	L A T
	Terra Bella	Cal	S P
	Texas City	Wash	O R & N
	Texas Hill	Ariz	S P
	Thatcher	Ariz	G V, G & N
	Thehard	Cal	S P
	The Palms	Cal	S P
	Thermal	Cal	S P
	Thisbie	Nev	S P
	Thomann	Cal	S P
	Thomas	Wash	N P
	Thomasson's Spur	Cal	S P
	Thompson's	Cal	S P
	Thompson's Siding	B C	C P
	Thona	Cal	S P
	Thorn Hollow	Ore	O R & N
	Thornton	Wash	O R & N
	Thorp	Wash	N P
	Thrall	Wash	N P
	Three Forks	B C	C P
	Thurston	Ore	S P
	Tia Juana	Cal	N C & Ot
	Tiburon	Cal	C N-W
	Tippecanoe	Cal	S P
	Tipton	Cal	S P
	Toano	Nev	S P
	Tocaloma	Cal	N P C
1001	Tochty	B C	C P
	Toledo	Ore	C & E
	Tolo	Ore	S P
	Toltec	Ariz	S P
	Toma	Ore	O R & N
	Tomales	Cal	N P C
	Tongs	Wash	G N
	Toppenish	Wash	N P
	Tortuga	Cal	S P
	Touchet	Wash	O R & N

	Station.		Location (road).
	Towle	Cal	S P
	Townsend	Ore	S P
	Tracy	Cal	S P
	Trail	B C	C P
	Traver	Cal	S P
	Tremont	Cal	S P
	Trent	Ore	S P
	Trent	Wash	N P
	Tres Pinos	Cal	S P
	Trigo	Cal	S P
	Trinidad	Wash	G N
	Tropico	Cal	S P L A T
	Troup Junction	B C	C P
	Trontdale	Ore	O R & N
	Truaxe's	Wash	O R & N
	Trubody	Cal	S P
	Truckee	Cal	S P
1002	Twenty-third Ave.	Cal	S P
	Twin Buttes	Ore	S P
	Tyler	Cal	S P
	Tyler	Wash	N P
	Ukiah	Cal	C N-W
	Ullin	Nev	S P
	Umatilla Junction	Ore	O R & N
	Umtanum	Wash	N P
	Union	Cal	S P
	Union	Nev	E & P
	Union	Ore	O R & N
	Union Ave.	Cal	S P
	Union Creek	Ore	S P
	Union Mill	Cal	S P
	Union Mills	Cal	S P
	Uniontown	Wash	N P
	Unity	Ore	O R & N
	University	Cal	S P
	Upper Soda Springs	Cal	S P
	Upton	Cal	S P
	Urgon	Cal	S P
	Urlam	Cal	S P
	Utsalady	Wash	P S Pts
	Vacaville	Cal	S P
	Vail	Ariz	S P
	Vails Gravel Pit	Ariz	S P
	Valbrick	Cal	S P
1003	Truxton	Ariz	S Fe Pac
	Tualatin	Ore	S P
	Tucson	Ariz	S P

Station.		Location (road).
Tudor	Cal	S P
Tuff	Ore	S P
Tulare	Cal	S F & S J V S P
Tulasco	Nev	S P
Tule	Nev	S P
Tulon	Nev	S P
Tumwater	Ore	O R & N
Tunnel	B C	C P
Tunnel	Cal	S P
Tunnel No. 1	Ore	S P
Tunnel No. 2	Ore	S P
Tunnel No. 3	Ore	S P
Tunnel No. 4	Ore	S P
Tunnel No. 5	Ore	S P
Tunnel No. 6	Ore	S P
Tunnel No. 7	Ore	S P
Tunnel No. 9	Ore	S P
Tunnel No. 13	Cal	S P
Turlock	Cal	S P
Turner	Cal	S F & S J V
Turner	Ore	S P
Turnbull	Cal	S F & S J V
Tustin	Cal	S P
Valencia	Cal	So Cal
Valery	Nev	S P
Vallejo Junction	Cal	S P
Valley	Ariz	S F P & P
Valley	Wash	S F & N
Valley Ford	Cal	N P C
Valley Grove	Wash	O R & N
Valley Springs	Cal	S P
Val Verde	Cal	So Cal
Vanarman	Ariz	S P
Van Asselts	Wash	N P
Vancouver	Wash	W & O O R & N
Vancouver	B C	P C Pts
Vanden	Cal	S P
Van Houten Creek	B C	C P
Van Sicklen Spur	Ariz	S P
Valsycle	Ore	W & C R
Van Wyck	Wash	B B & B C
Van Zandt	Wash	N P
Vancluse	Cal	S P
Vaughn's	Nev	N C
Vega	Cal	S P
Vegala	Cal	So Cal

	Station.		Location (road).
	Ventura Junction	Cal	S P
	Verdemont	Cal	So Cal
	Verdi	Nev	S P
1005	Verdi Mill Co's Spur	Nev	S P
	Verdugo Park	Cal	L A T
	Vernails	Cal	S P
	Vernon	B C	C P
	Vernondale	Cal	S P
	Verona	Cal	S P
	Victor	Cal	So Cal
	Victoria	B C	B C Pts
	Victoria	Cal	S P So Cal
	Viento	Ore	O R & N
	Villa Verona	Cal	S P
	Vina	Cal	S P
	Vincent	Cal	S P
	Vine Hill	Cal	S F & S J V
	Vineland	Cal	S P
	Vinvale	Val	S P
	Violet	Cal	S P
	Virgil	Ore	S P
	Virginia	Nev	V & T
	Visalia	Cal	S P S F & S J V Vis & T
	Visnaga	Ariz	S P
	Vista	Cal	So Cal
	Vista	Nev	S P
	Vivian	Nev	S P
	Volcano	Cal	S P
1006	Vollmer	Ida	N P
	Volraths	Wash	N P
	Volta	Cal	S P
	Vontrigger	Cal	C E
	Vulcan	Wash	G N
	Wabuska	Nev	C & C
	Wade	Cal	S P S Fe Pac
	Wadsworth	Nev	S P
	Wahl	Wash	B B & B C
	Waitsburg	Wash	O R & N W & C R
	Waldorf	Cal	S P
	Walerga	Cal	S P
	Walker	Ore	S P
	Wallace	Cal	S P

	Station.		Location (road).
	Wallace	Ida	N P O R & N
	Wallace	Wash	G N
	Walla Walla	Wash	O R & N W & C R
	Wallula Junction	Wash	N P O R & N
	Walnut Creek	Cal	S P
	Walters	Cal	S P
	Walter's	Nev	N C
	Walthall	Cal	S P
	Wanda	Cal	S P
	Waneta	B C	N & F S
1007	Wanklyn	B C	C P
	Wapato	Ore	S P
	Wardner	B C	C P
	Wardner	Ida	N P O R & N
	Warfield	B C	C P
	Warfield	Cal	S P
	Warm Springs	Cal	S P
	Warner	Wash	O R & N
	Warnersville	Cal	S Ry of C
	Warren	Cal	S P S Fe Pac
	Warren	Ore	W & C R
	Warren	Ore	N P
	Warrendale	Ore	O R & N
	Wasco	Cal	S F & S J V
	Wasco	Ore	C S
	Washington	Cal	S P
	Washoe (Winters)	Nev	V & T
	Washougal	Wash	O R & N
	Washtucna	Wash	O R & N
	Waterford	Cal	S P
	Waterford	Wash	O R & N
	Waterloo	Wash	W & C R
	Waterman	Ore	W & C R
	Water Street	Cal	So Cal
	Water Tank	Ariz	A & S E
	Water Works	Ida	N P
1008	Watkins	Cal	S F & S J V
	Watsons	Cal	N P C
	Watsons	Cal	S P
	Watsonville	Cal	S P
	Watts	Ida	O R & N
	Watts	Nev	N C
	Waukena	Cal	S F & S J V

	Station.		Location (road).
	Waukon	Wash	G N
	Waverly	Cal	S P
	Wawawai	Wash	O R & N
	Wayne	Cal	S P
	Weatherby	Ore	O R & N
	Weaver	Ore	S P
	Webster	Cal	S P
	Weed	Cal	S P
	Weed	Ore	S P
	Weiser	Ida	O S L
	Weiss	Wash	N P
	Weldon's	Cal	S P
	Wellington	Wash	G N
	Wells	Nev	S P
	Wellsdale	Ore	S P
	Wellsona	Cal	S P
	Wellton	Ariz	S P
	Wenas	Wash	N P
	Wenatchee	Wash	G N
	West Aberdeen	Wash	N P
1009	West Alhambra	Cal	S P
	West Berkeley	Cal	S P
	West Cucamonga	Cal	So Cal
	West Duarte	Cal	So Cal
	West Fork	Ore	S P
	West Glendale	Cal	S P
	West Robson	B C	C P
	Westminster	Cal	S A & N
	Westminster Junction	B C	C P
	West Oakland	Cal	S P
	Weston	Ore	O R & N
	Weston	Wash	N P
	Westport	Ore	O R & N
	Westport	Ore	A & C R
	West San Leandro	Cal	S P
	West San Lorenzo	Cal	S P
	West Scio	Ore	S P
	West Stayton	Ore	S P
	West Waterloo	B C	C P
	Westley	Cal	S P
	Wheatland	Cal	S P
	Wheeler's Spur	Cal	S P
	Whelan	Wash	N P
	Whipple	Ariz	S F P & P
	White Hills	Ariz	A & U
	White Plains	Nev	S P
	White Rock	Cal	S P
1010	Whites	Wash	N P

	Station.		Location (road).
	Whitrs Bridge	Cal	S P
	Whiteson	Ore	S P
	Whitewater	Cal	S P
	Whitewater	B C	K & S
	Whitewater Gravel Pit	Cal	S P
	Whitmans	Wash	O R & N
	Whitmore	Ore	S P
	Whitney	Wash	G N
	Whitney	Cal	S P
	Whittier (Evergr'n St)	Cal	S P
	Whittier (Hadley St)	Cal	S P
	Whitton	Cal	S F & S J V
	Whonnock	B C	C P
	Wible Orchard	Cal	S P
	Wickensburg	Ariz	S F P & P
	Wickersham	Wash	N P B B & E
	Wickes	Cal	S P
	Wicklow	Ariz	S F P & P
	Widbero	Cal	S P
	Wigan	Cal	S P
	Wigwam	B C	C P
	Wilbur	Wash	N P
	Wilbur (Umatilla Co)	Ore	O R & N
	Wilbur (Douglas Co)	Ore	S P
1011	Wildasin	Cal	So Cal
	Wildomar	Cal	So Cal
	Wildwood	Cal	S P
	Wilkeson	Wash	N P
	Wilkins	Ore	S P
	Willada	Wash	O R & N
	Willapa	Wash	N P
	Willcox	Ariz	S P
	Williams	Cal	S P
	Williams	Ariz	S Fe Pac
	Willows	Cal	S P
	Willows	Ore	O R & N
	Willsburg	Ore	S P
	Wilson	B C	C P
	Wilson	Cal	S P
	Wilson Creek	Wash	G N
	Wilmington	Cal	S P
	Wilmot	Ariz	S P
	Winchester	Cal	So Cal
	Winchester	Ore	S P
	Winchester	Wash	G N
	Windsor	Cal	C N-W
	Winery	Cal	S P

	Station.		Location (road).
	Winlaws Siding	B C	C P
	Winlock	Wash	N P
	Winnemucca	Nev	S P
1012	Winnipeg Mine	B C	C P
	Winona	Ariz	S Fe Pac
	Winona Junction	Wash	O R & N
	Winslow	Ariz	S Fe Pac
	Winstead	Cal	S P
	Winters	Cal	S A & N
	Winters	Cal	S P
	Winthrop	Cal	S P
	Wiseburn	Cal	So Cal
	Wisner	Cal	S P
	Witch Hazel	Ore	S P
	Wolds	Wash	N P
	Wolf Creek	Ore	S P
	Wolfskill	Cal	S P
	Woodberry	B C	K L Pts
	Woodbridge	Cal	S P
	Woodburn	Ore	S P
	Woodinville	Wash	N P
	Woodland	Cal	S P
	Woodland	Wash	N P W & O
	Woodlawn	Wash	B B & E
	Wood Spur	Cal	S P
	Woodberry	B C	C P
	Woodville	Ore	S P
	Wooley	Wash	G N N P
	Woolsey	Nev	S P
1013	Workman	Cal	L A T
	Wrenn	Ore	S P
	Wrens	Ore	C & E
	Wright's	Cal	S P
	Wunpost	Cal	S P
	Wyeth	Ore	O R & N
	Wymola	Ariz	S P
	Yakima City	Wash	N P
	Yampai	Ariz	S Fe Pac
	Yarmouth	Cal	S P
	Yaeger	Ariz	P & E
	Yahk	B C	C P
	Yale	B C	C P
	Yelm	Wash	N P
	Ymir	B C	N & F S
	Yoakum	Ore	O R & N
	Yolo	Cal	S P

	Station.		Location (road).
	Yoncalla	Ore	S P
	Yorba	Cal	So Cal
	Younglove's Spur	Cal	S P
	Young's	Ore	S P
	Yountfille	Cal	S P
	Yreka	Cal	Yreka
	Ysidora	Cal	So Cal
	Yuba City	Cal	S P
	Yuba Pass	Cal	S P
	Yuba Pass Quarry	Cal	S P
1014	Yucca	Ariz	S Fe Pac
	Yulupa	Cal	S P
	Yuma	Ariz	S P
	Zante	Cal	S P
	Zara	Cal	S P
	Zayante	Cal	S P
	Zimmerman	Ore	S P
	Zinfandel	Cal	S P
	Zola	Nev	S P
	Zuleka	Cal	S P
	Zumwalt	Wash	O R & N

1015 Sup. 2 to I. C. C. No. 203.

Supersedes Supplement No. 1.

Trans-continental Freight Bureau, Representing—

Atchison, Topeka & Santa Fe railray
Burlington & Mo. River R. R. in Neb.,
Canadian Pacific railway,
Chicago, Rock Island & Pacific R'y,
Choctaw, Oklahoma & Gulf R. R.,
Choctaw, Oklahoma & Texas R. R.,
Colorado Midland railway,
Colorado & Southern railway,
Denver & Rio Grande railroad,
El Paso & Northeastern railroad,
El Paso & Northeastern railway,
Great Northern railway,
Minneapolis, St. Paul & Sault Ste. Marie Ry,
Missouri, Kansas & Texas railway,
Missouri Pacific railway,
Northern Pacific railway,
Oregon Railroad & Navigation Co.,
Oregon Short Line railroad,
Oregon & California railroad,

Southern California railway,
St. Louis & San Francisco railroad,
St. Louis, Iron Mountain & Southern R'y,
Southern Pacific Co. (Atlantic system),
Southern Pacific Co. (Pacific system),
Texas & Pacific railway,
Union Pacific railroad.

1016 Supplement No. 2.

(Includes All Changes)

to

Circular No. 24–D. Effective as Noted.

Established Divisions

Applying

East and West-bound, as Provided, from or to Pacific Coast Terminal
and

List of Interior Pacific Coast Points

on Traffic

From and to which the same revenue accrues to lines east of Ch
cago, Mississippi River and Ohio River crossings, as they receiv
on similar shipments originating at or destined to Pacific Coas
terminals.

For territorial nboundaries, see territorial description publishe
on introductory pages of Trans-continental Freight Bureau's curre
tariffs, applying east-bound or west-bound, as the case may be.

W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
W. A. Bissell, ass't traffic manager,
Santa Fe system, San Francisco, Cal.
J. E. Gorman, general freight agent,
A T & S F Ry. Topeka, Kan.
E. Chamber-, general freight agent,
A T & S F Ry. (coast lines) and
So. Cal. Ry., Los Angeles, Cal.
1017 D. O. Ives, general freight agent,
Burl. & Mo. Riv. R. R. in Neb., Omaha, Neb.
W. R. McInnes, freight traffic manager,
Can. Pac. R'y, Montreal, Que.
W. B. Bulling, asst. frt. traffic mgr.,
Can. Pac. R'y (eastern lines) Toronto, Ont.
F. W. Peters, asst. frt. traffic mgr.,
Can. Pac. R'y, (western lines) Winnepeg, Man.

B. W. Greer, general freight agent,
Can. Pac. R'y, Vancouver, B. C.
H. Gower, asst. freight traffic manager,
C. R. I. & P. R'y, Chicago, Ill.
H. H. Embry, general freight agent,
C. R. I. & P. R'y (lines west of Mo. river).
Kansas City, Mo.
A. N. Brown, general freight agent,
E. P. & N. E. R. R. and E. P. & N. E. R'y,
El Paso, Tex.
J. F. Holden, traffic manager,
C. O. & G. R. R. and C. O. & T. R. R.,
Chicago, Ill.
H. W. Morrison, general freight agent
C. O. & G. R. R., Little Rock, Ark.
H. P. Greenough, general freight agent,
C. O. & T. R. R., Amarillo, Tex.
H. C. Bush, traffic manager,
Colo. Mid. R'y, Denver, Colo.
C. L. Wellington, traffic manager,
Colo. & Sou. R'y, Denver, Colo.
1018 H. A. Johnson, general freight agent,
Colo. & Sou. R'y, Denver, Colo.
W. C. Stith, freight traffic manager,
Mo. Pac. R'y, St. Louis, Mo.
J. C. Lincoln, general freight agent,
Mo. Pac. R'y, St. Louis, Mo.
A. S. Hughes, general traffic manager,
D. & R. G. R. R, Denver, Colo.
S. H. Babcock, asst. gen. traffic manager,
D. & R. G. R. R., Salt Lake City, Utah.
Fred Wild, Jr., general freight agent,
D. & R. G. R. R., Denver, Colo.
F. B. Clarke, general traffic manager,
Gt. Nor. R'y, St. Paul, Minn.
J. C. Eden, asst. gen. traffic manager
Gt. Nor. R'y, Seattle, Wash.
W. W. Broughton, general freight agent.
Gt. Nor. R'y, St. Paul, Minn.
W. L. Martin, freight traffic manager,
Minn., St. P. & S. Ste. M. R'y,
Minneapolis, Minn.
C. Haile, traffic manager,
Mo. Kan. & Tex. R'y, St. Louis, Mo.
W. B. Groseclose, general freight agent,
Mo. Kan. & Tex. R'y, St. Louis, Mo.
S. L. Moore, general freight agent,
Nor. Pac. R'y, St. Paul, Minn.

S. G. Fulton, asst. gen. frt. agt.,
Nor. Pac. R'y, Portland, Ore.
1019 H. A. Jones, freight traffic manager,
So. Pac. Co. (Atl. Sys.) Houston, Tex.
W. H. Masters, asst. traffic manager,
So. Pac. Co. (Atl. Sys.) New Orleans, La.
C. K. Dunlap, general freight agent,
So. Pac. Co. (Atl. Sys.) Houston, Tex.
Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pacific system and Oregon lines), San Francisco, Cal.
G. W. Luce, general freight agent,
So. Pac. Co. (Pacific system),
San Francisco, Cal.
W. E. Coman, general freight agent,
So. Pac. Co's lines in Oregon,
Portland, Ore.
G. A. Parkyns, asst. general freight agent,
So. Pac. Co. (Pac. Sys.) Los Angeles, Cal.
J. A. Middleton, general freight agent,
St. L. & S. F. R. R., St. Louis, Mo.
E. L. Sargent, general freight agent,
Texas & Pacific Ry., Dallas, Tex.
R. B. Miller, general freight agent,
Ore. R. R. & Nev. Co., Portland, Ore.
T. M. Schumacher, traffic manager,
Oregon Short Line R. R., Salt Lake City, Utah.
J. A. Monroe, freight traffic manager,
Union Pacific R. R., Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

1020 San Francisco, Cal., April 21, 1903. Sent to I. C. C. 4-22-1903. (Auth. 917.) Issued by R. H. Countiss, agent, 49 Second St., San Francisco, Cal.

Changes not shown in previous supplements are marked thus: Sup. 2.

Amendments.

The provisions of circular No. 24-D, referred to below, will be amended as follows:

Division of Through Rates via Car Ferry Lines, via Manitowoc, Wis., and Wisconsin Central R'y in Connection with Chicago & Alton R'y.

Effective October 13, 1902. The arrangement covering division of authorized through rates via car ferry, as published on page 9 of circular No. 24-D, will be amended to provide for routing via Wisconsin Central R'y (via Manitowoc, Wis.), in connection with Chi-

cago & Alton R'y, in addition to the other routes specified, on shipments routed via Ogden, Utah, Huntington, Ore., Barstow, Mojave or Bakersfield, Cal., or El Paso, Tex. (via "El Paso-Rock Island route," only).

Division of Through Rates from Stations on New York Central & Hudson River R. R. (Rome, Watertown & Ogdensburg Division and Adirondack Division).

Effective October 13, 1902. The divisions from New York and common points, published on page 14 of circular No. 24–D, will apply in division of the authorized through rates from stations on New York Central & Hudson River R. R. (Rome, Watertown & Ogdensburg division and Adirondack division), south of the international boundary, taking 'Richland' or 'Ogdensburg' capital rate basis to Chicago and other junction points with western roads,
1021 as provided in New York Central & Hudson River R. R. Co. joint tariff No. 800 (I. C. C. No. 2019), which took effect September 1, 1900, supplements thereto or superseding issues thereof.

Cancellation of rates and divisions from points on Delaware & Hudson Company's lines north of Schenectady and Mechanicsville, N. Y., in connection with Canadian Pacific R'y, Great Northern R'y, Northern Pacific R'y, or Oregon Railroad & Navigation Company.

Effective October 13, 1902, refer to page 15 of circular No. 24–D and cancel formula 91, covering divisions for traffic from points on the Delaware & Hudson Co.'s lines north of Schenectady and Mechanicsville, N. Y., to and including Caldwell, Whitehall and Eagle Bridge, N. Y., and Rutland, Vt., on shipments to Portland, East Portland, Albina and Astoria, Ore., and points north thereof taking terminal rates, in connection with Canadian Pacific R&y, Great Northern R'y, Northern Pacific R'y or Oregon — & Navigation Co. (via Spokane, Wallula Junc., Wash., or Huntington, Ore.)

Mazon, Ill., Specified as a Chicago Junction Point.

* Effective May 7, 1903, refer to formulas 42, 45, 55, 60, 81, 86, 96, 101 and 107 of circular No. 24–D and amend same by adding Mazon, Ill., to the Chicago junction points shown.

Agreed Divisions with Central Freight Association.

* Effective May 7, 1903, refer to page 8 of circular No. 24–D and amend list of roads comprising the Central Freight Associa-
1022 tion by adding the Cincinnati, Richmond & Muncie R. R.; also the Chicago, Indiana & Eastern Ry.

Amendments.

Agreed Divisions with Central Freight Association, Trunk Lines and New England Roads.

* Effective May 7, 1903, refer to pages 8, 9, 10, 11, 12, 13, 15, 16, and 17 of circular No. 24–D, covering divisions of rates for traffic to and from Central Freight Association territory and to and from New York, Boston and common points, and amend same to provide that the divisions shown will only apply in connection with published through rates of 75 cents per 100 lbs. and upwards.

Points in Virginia Designated below to and from which New York, Boston, and Common Point Rates Apply via Southern Railway.

East and West-bound.

* Effective May 7, 1903, in division of the published through rates to and from:

Alexandria	Va.	Petersburg	Va.
Charlottesville	"	Pinners Point	"
Fredericksburg	"	Portsmouth	"
Hampton	"	Richmond	"
Lynchburg	"	Roanoke	"
Manchester	"	Suffolk	"
Norfolk	"	Waverly	"
Newport News	"	West Point	"
Orange	"		

Local stations on Norfolk & Western Ry. in Virginia, east of Salem, Va., except points south of Roanoke and Lynchburg, Va.

1023 The Southern railway will be allowed east of the gateway junctions specified below the proportions shown of the through rates applying to or from Pacific Coast terminals:

East of East St. Louis, Ill	29 per cent.
East of Memphis, Tenn	29 per cent.

Boston, Mass., and Points in New England.

West-bound.

* Effective May 7, 1903, refer to page 16 of circular No. 24–D and amend section 4 to read as follows:

Fourth. The same through class and commodity rates as may be effective from Boston, Mass. (proper), will apply to Pacific Coast terminal points (subject to a minimum through rate of 75 cents per 100 lbs.), from all New England points (*subject to a minimum through rate of 75 cents per 100 lbs.*), *from all New England points* taking

Boston rates to Chicago and other western junctions, provided that on traffic routed via Boston the Trans-continental lines shall assume the cost of transportation of such traffic from such points of origin to Boston, including transfer charges for delivery to the stations of the several lines in Boston; it being understood that, *except as otherwise provided above*, traffic from interior New England points which is not routed via Boston shall continue to be billed at rates and classification at present in effect to Chicago and other junctions with western roads upon west-bound Pacific Coast traffic, viz: On the basis of 75, 65, 50, 35, 30, 25 cents per 100 lbs. to Chicago, on the six classes respectively, subject to the official classification.

1024 UNITED STATES OF AMERICA, Southern District of California, } ss:

I, Alton M. Cates, special examiner and commissioner, hereby certify that the foregoing testimony in the above entitled cause, was taken before me at the times and places in record thereof indicated, and that the stipulations of counsel made upon the dates and at the times set forth therein, are true and correct; that before testifying each of the several witnesses was by me severally and duly sworn to tell the truth, the whole truth and nothing but the truth, except the witness O. L. Rule, who, by agreement of counsel, was sworn at the time of signing his said testimony; that said testimony was taken in shorthand and by consent of parties, as shown in the foregoing record, the signature of some of the witnesses to their extended depositions, was waived, but in all other cases, the signature of each witness is appended to his respective deposition.

I further certify that the foregoing testimony transcribed and introduced into this cause, under the stipulation of counsel at page 2 of this record from the testimony taken in the cases of Consolidated Forwarding Company against the Southern Pacific Company and others, No. 575, and Southern California Fruit Agency against the Southern Pacific Company, and others, No. 576, before the Interstate Commerce Commission, has been carefully compared by me and under my direction, and the foregoing transcript of such testimony is correct.

And I further certify that annexed hereto and as a part of this record are certain original exhibits introduced by the respective parties, as appears from the offers of such testimony and endorsements upon such respective exhibits and being numbered respectively Complainant's Exhibits 7 to 42 both numbers inclusive,
1025 and defendant Southern Pacific Company's Exhibits Numbers 1 and 2, and defendant Atchison, Topeka and Santa Fe Railway's Exhibits Numbers 1 and 2, and Complainant's Exhibit Naftzger No. 1.

Witness my hand this 11th day of April, 1904.

ALTON M. CATES,
Special Examiner and Commissioner.

Amendments.

Agreed Divisions with Central Freight Association, Trunk Lines and New England Roads.

* Effective May 7, 1903, refer to pages 8, 9, 10, 11, 12, 13, 15, 16, and 17 of circular No. 24–D, covering divisions of rates for traffic to and from Central Freight Association territory and to and from New York, Boston and common points, and amend same to provide that the divisions shown will only apply in connection with published through rates of 75 cents per 100 lbs. and upwards.

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Alexandria	Va.	Petersburg	Va.
Charlottesville	"	Pinners Point	"
Fredericksburg	"	Portsmouth	"
Hampton	"	Richmond	"
Lynchburg	"	Roanoke	"
Manchester	"	Suffolk	"
Norfolk	"	Waverly	"
Newport News	"	West Point	"
Orange	"		

Local stations on Norfolk & Western Ry. in Virginia, east of Salem, Va., except points south of Roanoke and Lynchburg, Va.

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Boston rates to Chicago and other western junctions, provided that on traffic routed via Boston the Trans-continental lines shall assume the cost of transportation of such traffic from such points of origin to Boston, including transfer charges for delivery to the stations of the several lines in Boston; it being understood that, *except as otherwise provided above*, traffic from interior New England points which is not routed via Boston shall continue to be billed at rates and classification at present in effect to Chicago and other junctions with western roads upon west-bound Pacific Coast traffic, viz: On the basis of 75, 65, 50, 35, 30, 25 cents per 100 lbs. to Chicago, on the six classes respectively, subject to the official classification.

1024 UNITED STATES OF AMERICA, } ss:
Southern District of California, }

I, Alton M. Cates, special examiner and commissioner, hereby certify that the foregoing testimony in the above entitled cause, was taken before me at the times and places in record thereof indicated, and that the stipulations of counsel made upon the dates and at the times set forth therein, are true and correct; that before testifying each of the several witnesses was by me severally and duly sworn to tell the truth, the whole truth and nothing but the truth, except the witness O. L. Rule, who, by agreement of counsel, was sworn at the time of signing his said testimony; that said testimony was taken in shorthand and by consent of parties, as shown in the foregoing record, the signature of some of the witnesses to their extended depositions, was waived, but in all other cases, the signature of each witness is appended to his respective deposition.

I further certify that the foregoing testimony transcribed and introduced into this cause, under the stipulation of counsel at page 2 of this record from the testimony taken in the cases of Consolidated Forwarding Company against the Southern Pacific Company and others, No. 575, and Southern California Fruit Agency against the Southern Pacific Company, and others, No. 576, before the Interstate Commerce Commission, has been carefully compared by me and under my direction, and the foregoing transcript of such testimony is correct.

And I further certify that annexed hereto and as a part of this record are certain original exhibits introduced by the respective parties, as appears from the offers of such testimony and endorsements upon such respective exhibits and being numbered respectively Complainant's Exhibits 7 to 42 both numbers inclusive,
1025 and defendant Southern Pacific Company's Exhibits Numbers 1 and 2, and defendant Atchison, Topeka and Santa Fe Railway's Exhibits Numbers 1 and 2, and Complainant's Exhibit Naftzger No. 1.

Witness my hand this 11th day of April, 1904.

ALTON M. CATES,
Special Examiner and Commissioner.

(Endorsed:) No. 1039 Circuit court of the U. S. So. district of California So. division Interstate Commerce Commission *vs.* Southern Pacific Company, *et al.* Vol. I Testimony taken before Alton M. Cates, special examiner Longley, Keith, Bagley & Co. shorthand reporters. Filed Apr. 11 1904 Wm. M. Van Dyke clerk.

1026 In the Circuit Court of the United States, Southern District of California, Southern Division.

INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

Testimony Taken Before Special Examiner Cates.

Volume II.

Longley, Keith, Bagley & Co., Shorthand Reporters.

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1032 GEORGE A. PARKYNS, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct examination.

By Mr. CALL:

Q. What is your name?
A. George A. Parkyns.
Q. What is your occupation?
A. Assistant general freight and passenger agent, Southern Pacific Company.
Q. You are the same George A. Parkyns that previously testified in this case?
A. Yes sir.
Q. At the time of your last examination, you were requested to produce certain records from your office showing a table or instructions concerning the routing of citrus fruit freight over lines connecting with the Southern Pacific Company, and at that time under advice of counsel, you refused to produce those papers, did you not?
A. Yes sir.
Q. Afterwards, you were served with a *subpœna duces tecum* requesting you to produce those papers and some other papers described in the subpœna. I will now ask you if you have produced the papers called for?
A. Yes sir.
Q. Have you with you records and files from your office showing the distribution of eastbound citrus fruit traffic over lines con-
1033 necting with the Southern Pacific railroad, from the year commencing January, 1900, and ending with the present time?
A. Yes sir.
Q. Please produce the table or letter of instructions covering the first year, commencing with January, 1900.

(Witness hands document to counsel.)

Q. Do these papers constitute a part of the records of your office?
A. Yes sir.
Q. And have they been acted upon since they were issued?
A. What do you mean by that?
Q. Have the instructions been carried out by the officers of the company and agents of the company?

A. Yes, sir.

Q. The letter dated December 29th, 1899, signed by G. W. Luce, assistant general freight agent, addressed to Mr. Charles Seyler, is the first letter of instructions received upon that subject, is it?

A. To the best of my knowledge and belief.

By Mr. FLINT:

Q. You were not here at that time, were you?

A. No, I was not here.

Mr. CALL: I offer this paper in evidence, to be marked Complainant's Exhibit 17.

The document last offered is as follows:

1034 Copy.

"CPW. AF–39652. (LA.), December 29th, 1899.

(Confidential.)

Routing of Citrus Fruit Shipments.

Mr. Charles Seyler, agent So. Pac. Co., Los Angeles city.

DEAR SIR: Referring to Transcontinental Freight Bureau circular No. 21, effective January 1st, 1900, instructing that, commencing January 1st, 1900, agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon neither will agents accept verbal routing instructions therefor: that initial carrier will route each car from point of origin to destination and diversions in transit will not be permitted, except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will, therefore, please route transcontinental shipments originating on this company's lines, for the present, as follows:

First, deduct business destined to non-competitive points on the Santa Fe system; the balance route:

Via El Paso	85 per cent.
Via Ogden	15 per cent.

The El Paso business route as follows:

First, deduct business destined to points on Atlantic system, Southern Pacific Company, also points on the Houston & Texas
1035 Central R. R.: the balance send via the Texas & Pacific Ry.

The Texas & Pacific Ry. business route:

First, deduct Texas & Pacific Ry. locals; balance route:

Via St. Louis, Iron Mountain & Southern Ry.	50 per cent
Via St. Louis & San Francisco R. R.	34 per cent
Via Missouri, Kansas & Texas Ry.	16 per cent

The St. Louis, Iron Mountain & Southern Ry.'s proportion, route:
First, deduct St. Louis, Iron Mountain & Southern Ry. locals; balance route:

Via Wabash Ry..... 84 per cent.
Via Chicago & Alton R. R..... ..... 16 per cent.

The St. Louis & San Francisco R. R. proportion, route:
First, deduct St. Louis & San Francisco R. R. proportion, route:

Chicago, Milwaukee & St. Paul Ry..... 60 per cent.
Via Wabash Ry..... 40 per cent.

The Missouri, Kansas & Texas Ry. proportion, route:
First, deduct Missouri, Kansas & Texas Ry. locals; balance route:—

Via Chicago, Milwaukee & St. Paul Ry..... 83 per cent.
Via Chicago Great Western Ry..... 17 per cent.

The business via Ogden route:

Via Union Pacific Ry. and connections..... 70 per cent.
Via Rio Grande Western R. R. and connections. 30 per cent.

The Union Pacific Ry. proportion route:—
First, deduct Union Pacific Ry. locals; balance route:

Via Chicago, Milwaukee & St. Paul Ry..... 51½ per cent.
Via Chicago & Northwestern Ry..... 48½ per cent.

1036 Business for St. Paul and Minneapolis, via El Paso:
Route via Chicago, Milwaukee & St. Paul Ry.
Business for St. Paul and Minneapolis, via Ogden:
Route via Chicago, St. Paul, Minneapolis & Omaha Ry.
The Rio Grande Western's R. R. proportion route:
First, deduct Rio Grande Western R. R. locals; balance route:

Via Burlington & Missouri River R. R ..... 100 per cent.

The business via St. Louis, Iron Mountain & Southern R. R. and via St. Louis & San Francisco R. R., destined points east of St. Louis, route from St. Louis:

Via Wabash Ry., (connection for New York business is Erie R. R.) .. .. 50 per cent.
Via Vandalia line..... 25 per cent.
Via Baltimore & Ohio Southwestern Ry..... 25 per cent.

Traffic destined to points east of Chicago, via El Paso or Ogden and Chicago, route from Chicago:

Lake Shore & Michigan Southern Ry.	10 per cent.	Care Erie R. R. Buffalo.
Michigan Central Ry.	10 per cent.	
New York Central & St. Louis Ry.	10 per cent.	
Grand Trunk Ry.	30 per cent.	
Star Union line.	20 per cent.	
Baltimore & Ohio R. R.	20 per cent.	

It is appreciated it will be difficult for you to *toure* this business on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the very best you can, in line with the above-named per cents.,—which, however, are liable to be changed at any time.

On days when but few cars are shipped, all may be routed
1037 via one route, and via another route the next day, and so on, but the result to be as above, as near as possible.

It is desirable that on business destined Pittsburgh, the delivering line should be the Pennsylvania Company or Baltimore & Ohio R. R.

Cincinnati, the Pittsburgh, Cincinnati, Chicago & St. Louis Ry.

Cleveland, the New York Central & St. Louis Ry.

Philadelphia, the Philadelphia & Reading Ry., and Baltimore & Ohio R. R.

Buffalo, any (except Grand Trunk Ry.)

Detroit, the Michigan Central Ry. and Wabash Ry.

Boston, the Fitchburgh R. R.

Baltimore, the Baltimore & Ohio R. R.

The delivering lines above given are simply to indicate the preferable line for delivery at the various points named; as near as can be, it would be well to use this unless instructed otherwise.

It should be obvious that business destined to a non-competitive point on some particular line should be routed via that line, but if that road is not mentioned in the percentage routing, it should be given the shortest haul. For example, a local point on the Chicago, Rock Island & Pacific Ry., (which is unmentioned) located between Kansas City and Chicago, should be routed care Chicago, Rock Island and Pacific Ry. at Kansas City, whether the car goes via Ogden or El Paso.

Yours truly,

G. W. LUCE,
G. W. L.

C. C.
Mr. Wm. Sproule,
Mr. A. D. Shepard,
Agent, Colton."

1038 Mr. CALL: The next letter of instructions, from and to the same persons, February 27, 1900, which you now produce, we offer in evidence as Complainant's Exhibit 18.

The document last offered is as follows:

Copy.

"CPW. A-F-39652. (LA.), February 27th, 1900.

(Confidential.)

Mr. Charles Seyler, agent, Los Angeles, California.

NOTE.—*This letter cancels all previous routing and delivering line instructions.*

Mr. D. A. Bruce, agent, Colton, California.

Routing of Citrus Fruit Shipments—Preferred Delivering Lines.

GENTLEMEN: Referring to Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, instructing that, commencing January 1st, 1900, agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon; neither will agents accept verbal routing instructions therefor: that initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted, except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will therefore, commencing March 1st, 1900, please route transcontinental citrus fruit shipments originating on this company's lines, for the present, as follows:

First. Deduct business destined to non-competitive points on the Santa Fe system, Union Pacific Ry., Rio Grande Western Ry., Texas & Pacific Ry., Southern Pacific Company, (Atlantic 1039 system), Houston & Texas Central Railroad.

The balance route:

Via Ogden	85 per cent.
Via El Paso	15 per cent.

The business via Ogden rout-:

Via Union Pacific Ry. and connections.	70 per cent.
Via Rio Grande Western R. R. and connections..	30 per cent.

The Union Pacific Ry.'s proportion route:

Via Chicago & Northwestern Ry	60 per cent.
Via Chicago, Milwaukee & St. Paul Ry..	40 per cent.

The Rio Grande Western R. R.'s proportion route:

Via Denver & Rio Grande R. R., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy Ry	70 per cent.
Via Colorado Midland Ry., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.	30 per cent.

The business via El Paso, excepting that via Southern Pacific Company, (Atlantic system) route:

Via Texas & Pacific Ry..... ..... 100 per cent.

Texas & Pacific Ry. business for St. Louis or by St. Louis to points east thereof, route:

Via St. Louis, Iron Mountain & Southern Ry.. 100 per cent.

Kansas City and Chicago business, or that destined to points reached via Chicago, that cannot be routed via St. Louis, route:

Via St. Louis & San Francisco R. R..... 50 per cent.
Via Missouri, Kansas & Texas Ry..... 50 per cent.

(The business that is forwarded via Texas & Pacific Ry., that can be routed via St. Louis, should be sent that way.)

1040 The St. Louis & San Francisco R. R. proportion that is sent via Kansas City, route:

First, deduct St. Louis & San Francisco R. R. locals on Kansas City line; balance route:

Via Chicago, Milwaukee & St. Louis Ry..... 35 per cent.
Via Chicago & Alton R. R..... 30 per cent.
Via Chicago Great Western Ry..... 15 per cent.

The Missouri, Kansas & Texas Ry. proportion route:

First, deduct Missouri, Kansas & Texas Ry. locals; balance, route:

Via Chicago, Milwaukee & St. Paul Ry..... 63 per cent.
Via Chicago, Great Western Ry..... 27 per cent.
Via Wabash Ry.—at Kansas City..... 10 per cent.

Business via St. Louis, Iron Mountain & Southern R. R. and Chicago, Burlington & Quincy Ry. systems, via St. Louis, destined points east of St. Louis, route from St. Louis:

Via Wabash Ry. (connection for New York business is Erie R. R.) ..... 40 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry..... 35 per cent.
Via Vandalia line ..... 25 per cent.

Traffic via Chicago, destined to points east of Chicago, via El Paso and Kansas City or Ogden, route from Chicago:

Lake Shore & Michigan Southern Ry.....	10 per cent.	Care Erie R. R. at Buffalo.
Michigan Central Ry.....	10 per cent.	
New York, Chicago & St. Louis Ry.....	10 per cent.	
Grand Trunk Ry.....	10 per cent.	
Star Union Line.....	20 per cent.	
Baltimore & Ohio R. R.....	20 per cent.	
Cleveland, Cincinnati, Chicago & St. Louis Ry.....	20 per cent.	

1041 It is appreciated it will be difficult for you to route this business on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the very best you can, in line with the above-named per cents,—which,—however, are liable to be changed at any time.

On days when but few cars are shipped, all may be routed via one route, and via another route the next day, and so on: but the result to be as above, as nearly as possible.

It should be obvious that business destined to a non-competitive point on some particular line should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given the shortest haul. For example, a local point on the Chicago, Rock Island & Pacific Ry., (which railroad company is unmentioned) located between Kansas City and Chicago; the shipments destined such points should be routed care Chicago, Rock Island & Pacific Ry., at Kansas City, whether the car goes via Ogden or El Paso.

Specific Routings.

Boston business, via Chicago, route Pennsylvania lines, New York, New Haven, & Hartford R. R., care Fitchburg Ry., at Shellburne Falls.

Boston business, via St. Louis, route via Cleveland, Cincinnati, Chicago & St. Louis Ry., Lake Shore & Michigan Southern Ry., West Shore R. R., care Fitchburg Ry. at Rotterdam Junction.

Chicago business MUST NOT be routed via St. Louis.

Cincinnati business via either Chicago or St. Louis, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry..... 50 per cent.

1042 Via Pennsylvania lines..... 50 per cent.

Duluth business, route

Via St. Paul & Duluth R. R..... 50 per cent.
Via Great Northern Ry., from Sioux City..... 50 per cent.

Fargo business, route via Great Northern Ry. from Sioux City.

Grand Rapids business, route portion via the Michigan Central Ry., care of the Chicago & West Michigan Ry. at New Buffalo.

Minneapolis business, when forwarded via El Paso, route via Chicago, Mailwaukee & St. Paul Ry., excepting business for E. P. Stacy & Sons, which route via the Chicago, St. Paul, Minneapolis & Omaha Ry.

Minneapolis business, when forwarded via Ogden, route via Chicago, St. Paul, Minneapolis, & Omaha Ry.

Omaha business, route via Ogden.

Philadelphia business, route via the Pennsylvania lines, whether via Chicago or St. Louis.

Richmond, Va. business, route via Sunset Route, care New Orleans & North Eastern R. R., and Southern Ry.

Savannah business, route via Louisville & Nashville R. R. at New Orleans, care of Central of Georgia Ry., Montgomery, Ala.

St. Louis business, cend via El Paso, Texas & Pacific Ry., St. Louis, Iron Mountain & Southern Ry., and Southern Ry., unless shippers express preference for passing through markets reached via Ogden.

St. Paul business, when forwarded via El Paso, route via Chicago, Milwaukee & St. Paul Ry.

St. Paul business, when forwarded via Ogden, route via Chicago, St. Paul, Minneapolis & Omaha Ry.

Wichita business route via Chicago, Rock Island & Pacific Ry. from Fort Worth.

1043 Winnipeg business, route via Great Northern Ry. from Sioux City.

Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering lines as shown must be used.

Destination.	Preferred delivery.	When shipped by—
Albany	Delaware & Hudson Co	Earl Fruit Co.
Atlanta	Southern Ry	So. Cal. Fruit Exchange
Baltimore	Star Union Line	Earl Fruit Co.
Do.	Baltimore & Ohio R. R.	So. Cal. Fruit Exchange
Do.	Do.	Fay Fruit Co.
Birmingham	Southern Ry	So. Cal. Fruit Exchange
Buffalo	Michigan Central Ry	So. Cal. Fruit Exchange
Do.	Grand Trunk Ry	Fay Fruit Co.
Do.	Lake Shore & Mich. Southern	Ruddock, Trench & Co.
Do.	Do.	Covina Orange Growers Assn.
Canadian points.	Grand Trunk Ry	So. Cal. Fruit Exchange
Do.	Do.	Fay Fruit Co.
Chattanooga	Southern Ry	So. Cal. Fruit Exchange
Chicago	C. M. & St. P. or C. & N. W.	Earl Fruit Co.
Do.	Chicago, Milwaukee & St. Paul	Fay Fruit Co.
Do.	Do.	Ruddock, Trench & Co.
Do.	Do.	Briggs, Spence & Co.
Do.	Do.	Newhall & Sons.
Do.	Chicago & Northwestern Ry.	Porter Brothers Co.

Destination.	Preferred delivery.	When shipped by—
Cincinnati.....	Baltimore & Ohio Southwestern	So. Cal. Fruit Exchange
Do.	C. C. C. & St / L. (Big 4)...	Fay Fruit Co.
Do.	Star Union Line	Earl Fruit Co.
Cleveland	New York, Chicago & St. Louis	So. Cal. Fruit Exchange
1044		
Do.	Do.	Earl Fruit Co.
Do.	Do.	Fay Fruit Co.
Do.	C. C. C. & St. L. (Big 4)...	Covina Orange Growers Assn.
Columbus.....	Pennsylvania lines.....	Fay Fruit Company
Do.	Baltimore & Ohio Southwestern	So. Cal. Fruit Exchange
Denver	Union Pacific Ry.....	Fay Fruit Co.
Des Moines...	Chicago, Great Western Ry.	So. Cal. Fruit Exchange
Do. ...	Do.	Ruddock, Trench & Fo.
Detroit.....	Mich. Centl. or L. S. & M. S.	So. Cal. Fruit Exchange
Do.	Grand Trunk Ry.....	Fay Fruit Co.
Indianapolis..	C. C. C. & St. L. (Big 4)...	So. Cal. Fruit Exchange
Kansas City..	Missouri, Kansas & Texas Ry.	Fay Fruit Co.
Lima, O.....	Lake Erie & Western Ry.	Covina Orange Frowers Assn.
Do.	Erie Ry.....	Altschul Bros. & Co.
Louisville.....	Baltimore & Ohio Southwest'n	So. Cal. Fruit Exchange
Milwaukee ...	Chicago, Milwaukee & St. Paul	Fay Fruit Co.
Minneapolis..	Do.	So. Cal. Fruit Exchange
Do.	Do.	Covina Orange Growers Assn.
Do.	Chicago, St. P. M. & Omaha Ry.	Fay Fruit Co.
Do. ...	C. St. P. M. & O. and C. M. & St. P.	Porter Bros. Co.
New York.....	Erie Ry.....	So. Cal. Fruit Exchange
Do.	Do.....	Covina Orange Growers Assn.
Do.	Do.....	Fay Fruit Co.
Do.	Do.....	Ruddock, Trench & Co.
Do.	Do.....	Porter Bros. Co.
Do.	Do.....	Earl Fruit Co.

1045

Destination.	Preferred delivery.	When shipped by—
Omaha	Union Pacific..	Fay Fruit Co.
Do.	Do.	So. Cal. Fruit Exchange
Philadelphia..	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange
Do. ...	Pennsylvania lines.....	Fay Fruit Co.
Do. ...	Lehigh Valley R. R.....	Ruddock, Trench & Co.
Do. ...	Philadelphia & Reading R. R.	Porter Bros. Co.
Do. ...	Do.	Earl Fruit Co.
Pittsburgh....	Star Union.....	Earl Fruit Co.
Do.	Baltimore & Ohio R. R.....	So. Cal. Fruit Exchange
Do.	Pennsylvania lines.....	Fay Fruit Co.
Do.	Do.	A. Gregory.
Do.	Do.	Moulton & Green.
Do.	Do.	Sandilands Bros.
Do.	Do.	Sparr Fruit Co.
Do.	Do.	Briggs, Spence & Co.
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.
Do.	Lehigh Valley R. R.....	Earl Fruit Co.
Salt Lake City.	Rio Grande Western R. R..	Ruddock, Trench & Co.
Sioux City....	Union Pacific Ry.....	So. Cal. Fruit Exchange
Springfield....	Boston & Albany R. R.....	Earl Fruit Co.
St. Louis.....	M. K. & T. R. R.....	Fay Fruit Co.
Do.	St. Louis & San Francisco R. R.	Ruddock, Trench & Co.
St. Paul.....	Chicago, Milwaukee & St. Paul.	So. Cal. Fruit Exchange
Do.	C. St. P. M. & O. R. R.....	Fay Fruit Co.
Do.	C. M. & St. P. or C. St. P. M. & O.	Porter Bros. Co.
Syracuse.....	New York Central & H. R. R. R.	Earl Fruit Co.
Utica, N. Y...	Delaware, Lackawanna & W.	Earl Fruit Co.

1046

Washington, D. C.	Baltimore & Ohio, S. W...	So. Cal. Fruit Exchange
Do.	Star Union.....	Earl Fruit Co.
Waterloo, Ia..	Chicago, Great Western Ry.	So. Cal. Fruit Exchange

Special Instructions.

Route Porter Brothers Company's business via Ogden, Union Pacific Ry. to the Missouri river.

To Chicago, divide Chicago & Northwestern Ry..... 50 per cent.
Chicago, Milwaukee & St. Paul Ry. 50 per cent.
New York business, route via Erie Ry. from Chicago.. 100 per cent.
Boston business, route from Chicago via Erie Ry., care of Fitchburg Ry. .... 100 per cent.

Avoid routing any of this firm's business via the Lake Shore & Michigan Southern Ry., no matter what the destination of the business may be, excepting points only reached by the L. S. & M. S. Ry.

Business for E. P. Stacy & Sons'. Minneapolis, route via Chicago, St. Paul, Minneapolis & Omaha R. R.

It should be understood that instructions given to route business to any particular point via any specific line or lines, or that delivery should be given by any particular line, out of deference to shipper's preference, should be considered in the percentage alloted to those particular lines, as per the above percentages, and not as an addition to the percentages above shown.

Please acknowledge receipt of this communication, obliging,

Yours truly, G. W. LUCE,
By G. W. L.

C. C.
Mr. Wm. Sproule.
Mr. W. G. Neimyer."

1047 Mr. CALL: I also offer letter of February 5th, 1900, marked Complainant's Exhibit No. 19.

The document last offered is as follows:

Copy.

" CPW. AF-39652.

(Confidential.)

(LA.), February 5th, 1900.

Mr. Charles Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

NOTE.—This letter cancels my letter of Jan'y 23rd, regarding routing of citrus fruit shipments; also my letter of Feb'y 3rd, *re* distribution business destined North Pacific Coast points; and my letter Feb'y 3rd routing citrus fruits shipments via Pennsylvania lines N. Y. N. H. & H. and Fitchburg Ry., when destined Boston, Mass.

Routing of Citrus Fruit Shipments.

GENTLEMEN: Referring to transcontinental freight bureau circular No. 21, effective January 1st, 1000, instruction that, commencing January 1st, 1000, agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon; neither will agents accept verbal routing instructions therefor; that initial carrier will route each car from point of origin to destination and diversions in transit will not be permitted, except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will therefore, please route transcontinental shipments originating on this company's lines, for the present, as follows:

1048 First, deduct business destined to non-competitive points on that Santa Fe system; the balance route:

Via El Paso..... 85 per cent.
Via Ogden ..... 15 per cent.

The El Paso business, route as follows:

First, deduct business destined to points on Atlantic system, Southern Pacific Company, also points on the Houston & Texas Central R. R.; the balance send via the Texas & Pacific Ry.

The Texas & Pacific Ry. business route:

First: deduct Texas & Pacific Ry. locals; balance route:

Via St. Louis, Iron Mountain & Southern Ry... 50 per cent.
Via St. Louis & San Francisco R. R..... 34 per cent.
Via Missouri, Kansas & Texas Ry..... 16 per cent.

St. Louis & San Francisco R. R. proportion route:

Via Kansas City..... 60 per cent.
Via St. Louis ..... 40 per cent.

That via Kansas City route:

Via Chicago, Milwaukee & St. Paul Ry..... 60 per cent.
Via Chicago, Great Western Ry..... 20 per cent.
Via Chicago & Alton R. R..... 20 per cent.

The Missouri, Kansas & Texas Ry. proportion route:

First, deduct Missouri, Kansas & Texas Ry. locals; balance route:

Via Chicago, Milwaukee & St. Paul Ry..... 63 per cent.
Via Chicago, Great Western Ry..... 27 per cent.
Via Wabash Ry.—at Kansas City ..... 10 per cent.

The business via Ogden route:

Via Union Pacific Ry. and connections..... 70 per cent.
Via Rio Grande Western R. R. and connections.. 30 per cent.

The Union Pacific Ry.'s proportion route:

1049 First, deduct Union Pacific Ry. locals; balance route:

Via Chicago, Milwaukee & St. Paul Ry..... 51½ per cent.
Via Chicago & Northwestern Ry..... 48½ per cent.

The Rio Grande Western R. R.'s proportion route:

First, deduct Rio Grande Western R. R. locals; balance route:

Via D. & R. G., N. & M. R. R. and C. B. & Q. Ry... 100 per cent.

Business via St. Louis, Iron Mountain & Southern R. R., and via the St. Louis & San Francisco R. R., destined points east of St. Louis, route from St. Louis:

Via Wabash Ry. (connection for New York business is Erie R. R.)..... 50 per cent.
Via Vandalia line..... 25 per cent.
Via Baltimore & Ohio Southwestern R. R..... 25 per cent.

Traffic destined to points east of Chicago, via El Paso or Ogden and Chicago, route from Chicago:

Lake Shore & Michigan Southern Ry.....	10 per cent.	Care Erie at Buffalo.
Michigan Central Ry.....	10 per cent.	
New York, Chicago & St. Louis Ry.....	10 per cent.	
Grand Trunk Ry.	10 per cent.	
Star Union line.....	20 per cent.	
Baltimore & Ohio R. R.....	20 per cent.	

It is appreciated it will be difficult for you to route this business on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and at times, to points west thereof; but you are to do the very best you can, in lines with the above-named per cents,—which, however, are liable to be changed at any time.

On days when but few cars are shipped, all may be routed via one route, and another route the next day, and so on, but the
1050 result to be as above, as near as possible.

It should be obvious that business destined to a non-competitive point on some particular line should be routed via that line, but if that road is not mentioned in the percentage routing, it should be given the shortest haul. For example, a local point on the Chicago, Rock Island & Pacific Ry., (which railroad company is unmentioned) located between Kansas City and Chicago, should be routed care Chicago Rock Island & Pacific Ry. at Kansas City, whether the car goes via Ogden or El Paso.

St. Paul and Minneapolis business, when forwarded via El Paso, route via Chicago, Milwaukee & St. Paul Ry.

St. Paul & and Minneapolis business, when forwarded via Ogden, route via Chicago, St. Paul, Minneapolis & Omaha Ry.

Chicago business, do not route via St. Louis, Iron Mountain & Southern Ry.

Boston business route via Pennsylvania lines, New York, New Haven & Hartford, and Fitchburg Ry.

Shipments of citrus fruit destined to Northern Pacific R. R. Co. and Oregon Railway & Navigation Co. common points in the Northwest:

Route via Oregon Railway & Navigation Co..... 75 per cent.
via Northern Pacific R. R..... 25 per cent.

Yours truly,

G. W. LUCE.
G. W. L.

C. C. W. S.
W. G. N."

1051 Mr. FLINT: It was understood at the time of the hearing of this proceeding before the district court, in which Mr. Parkyns was cited to show cause why he should not produce these documents, that the documents presented should be kept by the examiner and the public not permitted to see or examine them.

Mr. CALL: Well, as to that, I would say that I have no objections to the examiner holding the papers from public inspection. They, however, of course, are part of the record in the case, and his control over them will terminate when his report is filed in the circuit court, until which time I would have no objection to their being withheld from public inspection, except, of course, to the examination of counsel and use in the case.

Mr. FLINT: And that no outsiders are to be permitted to examine the documents, and before the report is filed by the examiner that we should be given an opportunity of applying to the circuit court for an order that the documents should not be made public, as we contend that they are confidential communications and not material to the issues in this case and would result in injury to the business of the company if they were made public.

The EXAMINER: Of course, you understand that these sheets presented by the Santa Fe, in making up the copies of testimony for the use of counsel for respective parties, for yourself, for Mr. Norton, and Mr. Call, the copies of the exhibits are put in your copies of the testimony. Now, they are public to that extent, that Mr. Call sees them and Mr. Norton sees them.

Mr. CALL: Oh, they are papers that must be part of the record and have got to be subject to examination by counsel, and if it is necessary to make comparisons by witnesses or expert wit-
1052 nesses. They would have to be examined.

Mr. FLINT: That was not the understanding, was it, Mr. Valentine?

Mr. VALENTINE: The understanding in the court was that they should necessarily have to be part of the record. That was mentioned at the time. They should, however, be kept from the public and not exposed to the public more than the necessities—I think I used the words, "more than the necessities of the case demanded." The understanding in court was, and I understood you to assent to that, that they would have to be a part of the record, necessarily be a part of the record.

Mr. NORTON: Yes, we understand they become part of the record.

Mr. VALENTINE: And I stated, and state now, so far as I am personally concerned, that I see no reason why they should be made public and why the request of counsel here should not be granted.

Mr. NORTON: The point on which I based my request was that as it has not been passed upon whether they are really properly in the record or not, and it will not be until it comes to the court of last resort, why, that strictly speaking they are really not matters of record, and until that time that the ordinary publicity of a record matter should not be given to them because they may not be record matter eventually.

Mr. VALENTINE: I don't see that any stipulation that counsel may make here will affect or curtail the right of counsel for defendants to go to the court and get an order that the files be kept from the public.

The EXAMINER: Then, do I understand you, that you don't
1053 want copies of these made to go in the copies of the testimony furnished to counsel the way it was done with the Santa Fe?

Mr. FLINT: My understanding was that these documents were not to be included in the record at this time; that they were to be held by the examiner in secret, and before the record was filed that we would be given an opportunity to apply to the court for an order that they be not included in the record of this case.

Mr. VALENTINE: I don't know what idea you had of applying to the court. There should not be any difficulty about that.

Mr. CALL: The papers offered are in evidence or else not in evidence. If they are in evidence, the parties are entitled to see them and counsel are and they are to be used in comparisons with other evidence and in the preparation of the case and checked up. If they are not in evidence, why, then, of course, they cannot do anything of the sort. They could not be produced, if not in evidence.

The EXAMINER: I agree that the examiner should not give them to the public in any way, and I make the same order in regard to this exactly.

Mr. NORTON: Well, that was my understanding, that he would not give them out.

Mr. VALENTINE: My understanding necessarily was that they should appear as part of the commissioner's report here, but that they should not be given out to the public.

1054 Also letter of January 5th, 1900, marked Complainant's Exhibit No. 20.

The document last offered is as follows:

Copy.

"CPW. AF-39652.

(Personal.)

(LA.,) January 5th, 190–.

Mr. Chas. Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

Distribution of Business Destined Boston via Chicago to Grand Trunk.

DEAR SIRS: In the distribution of business going to Boston via Chicago, it will not be out of place to route a portion, say 20%, via the Grand Trunk Ry. system, care of the Fitchburg Ry.

Yours truly,

G. W. LUCE.
G. W. L.

C. C. Mr. Wm. Sproule."

1055 Also letter of February 3rd, 1900, marked Complainant's Exhibit No. 21.

The document last offered is as follows:

Copy.

"CPW. AF-39652.

(Personal.)

(LA.), February 3rd, 1900.

Mr. Charles Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

Distribution Business Destined North Pacific Coast Points.

GENTLEMEN: On shipments of citrus fruits destined to Northern Pacific R. R. Co. and Oregon Railway & Navigation Co. common points in the Northwest, arrange to give to the

Oregon Railway & Navigation Co..... 75 per cent.
Northern Pacific R. R..... 25 per cent.

Yours truly,

—— ——.

C. C. Mr. Wm. Sproule.

Referring to your favor A-500 of Jan'y 29th, and returning herewith enclosures accompanying same.

Mr. A. D. S."

1056 Also letter of January 31st, 1900, marked Complainant's Exhibit No. 22.

The document last offered is as follows:

Copy.

"F. BO–39652.

(Personal.)

(LA.), Jan. 31st, 1900.

Mr. Charles Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

Routing Citrus Fruit Shipments Destined Wichita, Kansas.

DEAR SIRS: Referring to my letter of January 1st on above subject:—

Please route all citrus fruit shipments destined Wichita, Kans., care of Rock Island at Fort Worth.

Yours truly,

G. W. LUCE.
G. W. L.

C. C. Mr. Wm. Sproule,
Mr. W. G. Neimyer."

1057 Also letter of January 26, 1900, marked Complainant's Exhibit No. 23.

The document last offered is as follows:

"Copy.

CPW. AF–39652.

(Personal.)

(LA.), January 26, 1900.

Mr. Charles Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

Correction in Letter of January 23rd.

GENTLEMEN: Referring to my letter of January 23rd, AF–39652, giving percentage of routing of citrus fruit shipments, and especially to line three page three, reading, 'New York Central & St. Louis Ry.'—

Please correct same to read, 'New York, CHICAGO & St. Louis Ry.' and oblige,

Yours truly,

G. W. LUCE.
G. W. L.

C. C. Mr. Wm. Sproule."

1058 Also letter of January 26th, 1900, marked Complainant's Exhibit No. 24.

The document last offered is as follows:

Copy.

"CPW. AF-39652.

(Personal.)

(LA.), January 26, 1900.

Mr. Charles Seyler, agent So. Pac. Co., city.
Mr. D. A. Bruce, agent So. Pac. Co., Colton, Cal.

Routing Business Destined Duluth via St. Paul & Duluth Ry.

GENTLEMEN: You may route a portion of the business destined to Duluth via the St. Paul & Duluth Ry.

Yours truly,

G. W. LUCE.
G. W. L.

C. C. Mr. Wm. Sproule,
Mr. W. H. Neimyer."

1059 Also letter of January 26th, 1900, marked Complainant's Exhibit No. 25.

The document last offered is as follows:

Copy.

"CPW. AF-39652.

(Personal.)

(LA.), January 26, 1900.

Mr. Charles Seyler, agent Southern Pacific Co., city.
Mr. D. A. Bruce, agent Southern Pacific Company, Colton, California, U. S. A., W. H.

Routing Citrus Fruit for Grand Rapids, Mich., via C. & W. M. Ry.

GENTLEMEN: Please give a fair proportion of citrus fruit traffic destined Grand Rapids, Michigan, to the Michigan Central Ry., care of the Chicago & West Michigan Ry., at New Buffalo, obliging,

Yours truly,

G. W. LUCE.
G. W. L.

C. C. Mr. A. D. Shepard,
Mr. W. G. Neimyer."

1060 Also letter of January 23rd, 1900, marked Complainant's Exhibit No. 26.

The document last offered is as follows:

Copy.

"CPW. AF-39652.

(Confidential.)

(LA.), January 23, 1900.

Mr. Charles Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

NOTE.—This letter cancels my letter of December 29th, 1899, on following subject.

Routing of Citrus Fruit Shipments.

GENTLEMEN: Referring to Transcontinental Fruit Bureau circular No. 21, effective January 1st, 1900, instructing that, commencing January 1st, 1900, agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon neither will agents accepts verbal routing instructions therefor; that initial carrier will route each car from point of origin to destination and diversion in transit will not be permitted, except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will, therefore, please route transcontinental shipments originating on this company's lines, for the present, as follows:

First, deduct business destined to non-competitive points on the Santa Fe system; the balance route:—

Via El Paso ..... 85 per cent.
Via Ogden ..... 15 per cent.

1061 The El Paso business route as follows:

First, deduct business destined to points on Atlantic system, Southern Pacific Company, also points on the Houston & Texas Central R. R.; the balance send via the Texas & Pacific Ry.

The Texas & Pacific business route:

First, deduct Texas & Pacific Ry. locals; balance, divide,

Via St. Louis & San Francisco R. R..... 68 per cent.
Via Missouri, Kansas & Texas Ry..... 32 per cent.

St. Louis & San Francisco R. R. portion route:

Via Kansas City ..... 60 per cent.
Via St. Louis ..... 40 per cent.

That via Kansas City route:

Via Chicago, Milwaukee & St. Paul Ry	60 per cent.
Via Chicago, Great Western Ry	20 per cent.
Via Chicago & Alton R. R	20 per cent.

That via St. Louis, route:

Via Wabash Ry. (connection for New York business is Erie R. R.)	50 per cent.
Via Vandalia line	25 per cent.
Via Baltimore & Ohio Southwestern Ry	25 per cent.

The Missouri, Kansas & Texas Ry. proportion route:
First, deduct Missouri, Kansas & Texas Ry. locals; balance route.

Via Chicago, Milwaukee & St. Paul Ry	63 per cent.
Via Chicago, Great Western Ry	27 per cent.
Via Wabash Ry.—at Kansas City	10 per cent.

The business via Ogden, route:—

Via Union Pacific Ry. and connections	70 per cent.
Via Rio Grande Western R. R. and connections	30 per cent.

1062 The Union Pacific Ry.'s proportion route:
First, deduct Union Pacific Ry. locals; balance, route:—

Via Chicago, Milwaukee & St. Paul Ry	51½ per cent.
Via Chicago & Northwestern Ry	46½ per cent.

The Rio Grande Western R. R.'s proportion, route:—
First, deduct Rio Grande Western locals; balance route:—

Via D. & R. G., B. & M. R. R., and C. B. & Q. R. R.	100 per cent.

Traffic destined to points east of Chicago, via El Paso or Ogden and Chicago, route from Chicago:

Lake Shore & Michigan Southern Ry	10 per cent.	Care Erie R. R. Buffalo.
Michigan Central Ry	10 per cent.	
New York, Chicago & St. Louis Ry	10 per cent.	
Grand Trunk Ry	30 per cent.	
Star Union Line	20 per cent.	
Baltimore & Ohio R. R.	20 per cent.	

It is appreciated it will be difficult for you to route this business on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the very best you can, in line with the above-named percents—which, however, are liable to be changed at any time.

On days when but few cars are shipped, all may be routed via

one route, and via another route the next day, and so on, but the result to be as above, as near as possible.

It should be obvious that business destined to a non-competitive point on some particular line should be routed *via* that line, but if that road is not mentioned in the percentage routing, it should be given the shortest haul. For example, a local point on the
1063 Chicago, Rock Island & Pacific Ry., (which railroad is unmentioned) located between Kansas City and Chicago, should be routed care Chicago, Rock Island & Pacific Ry. at Kansas City, whether the car goes via Ogden or El Paso.

St. Paul & Minneapolis business, when forwarded via El Paso, route via Chicago, Milwaukee & St. Paul Ry.

Chicago business do not route via Wabash Ry. unless given to that line at Kansas City by the Missouri, Kansas City & Texas Ry.

Yours truly,

G. W. LUCE.
G. W. L.

C. C. Mr. Wm. Sproule,
Mr. A. D. Shepard,
Mr. W. G. Neimyer."

1064 Also letter of February 23rd, 1900, marked Complainant's Exhibit No. 27.

The document last offered is as follows:

Copy.

"CPW. AF-39652.

(Personal.)

(La.), February 23, 190-.

Mr. Charles Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

Routing Citrus Fruit Business Destined Spokane.

GENTLEMEN: Route citrus fruit business destined Spokane, Washington, as follows:

Via the Oregon Railway & Navigation Co..... 90 per cent.
Via the Northern Pacific Ry..... 10 per cent.

Yours truly,

G. W. LUCE.
G. W. L.

C. C. Mr. Wm. Sproule,
Mr. C. H. Markham."

1065 Also letter of February 27th, 1900, marked Complainant's Exhibit No. 28.

The document last offered is as follows:

Copy.

"CPW. A-F-39652.

(Confidential.)

(La.), February 27th, 190-.

Mr. Charles Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

Note.—This letter cancels all instructions covering the traffic named below.

Routing Utah Common Points, Citrus Fruit Traffic.

Gentlemen: Route Utah common points, citrus fruit traffic via the Rio Grande Western R. R., and the Oregon Short Line, as follows:

First deduct the local business of each line, the balance route,

Via Rio Grande Western R. R..... 66⅔ per cent.
Via Oregon Short Line..... ..... 33⅓ per cent.

Destination.	Preferred delivering line.	When shipped by
Salt Lake City.	Rio Grande Western R. R.	Ruddock, Trench & Co.

Yours truly,

G. W. L.,
By G. W. L.

C. C. Mr. Wm. Sproule.

Memo.—Authority is letter from W. S. 1536 of Feb'y 3rd, see file A-O 2785."

1066 Also letter of February 27th, 1900, marked Complainant's Exhibit No. 29.

The document last offered is as follows:

Copy.

"CPW. A-F 39652.

(Confidential.)

La., February 27th, 1900.

Mr. Charles Seyler, Los Angeles, California.
D. A. Bruce, agent, Colton, California.

Note.—This letter cancels all instructions covering traffic named below.

Citrus Fruit to No. Pac. R. R. and O. R. & N. Co., Common Points in Northwest.

GENTLEMEN: Shipments of citrus fruit destined to Northern Pacific R. R. Co. and Oregon Railway & Navigation Company common points in the Northwest, please route.

Via Oregon Railway & Navigation Co..... 75 per cent.
Via Northern Pacific R. R. Co..... 25 per cent.

Excepting Spokane citrus fruit shipments, which please route

Via Oregon Railway & Navigation Co..... 90 per cent.
Via Northern Pacific R. R. Co..... 10 per cent.

Yours truly,

G. W. LUCE,
By G. W. L.

C. C. Mr. Wm. Sproule,
Mr. C. H. Markham."

1067 Also letter of March 2nd, 1900, marked Complainant's Exhibit No. 30.

The document last offered is as follows:

Copy.

" W. A-F-39652.

(Personal.)

MARCH 2ND, 1900.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing Citrus Fruit from Missouri River Destined Chicago, When Forwarded via the R. G. W. and Connections.

GENTLEMEN: Should it become necessary to give any Chicago business to the Rio Grande Western R. R. and connections, in order to give that route its allottment, as per my letter of February 27th, you will please route such business from Mo. river as follows:

Via the Chicago & Northwestern Ry. at Missouri river..... 60 per cent.
Via the Chicago, Milwaukee & St. Paul at Missouri river..... 40 per cent.

Yours truly,

G. W. L.

C. C. Mr. Wm. Sproule,
Mr. W. H. Neimyer."

1068 Also letter of March 14th, 1900, marked Complainant's Exhibit No. 31.

The document last offered is as follows:

Copy.

"CPW. A-F 39652.

(Confidential.)

MARCH 14TH, 1900.

Mr. Chas. Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

NOTE.—*This letter cancels all previous routing and delivering line instructions excepting letters Feb'y 27th covering citrus fruit traffic destined No. Pac. R. R. and O. R. & N. Co. common points and Utah common points.*

Routing of Citrus Fruit Shipments—Preferred Delivering Lines.

GENTLEMEN: Referring to Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, instructing that, commencing January 1st, 1900*m* agents will not accept shipping orders or other *coduments* covering shipments of citrus fruit, if routing instructions are shown thereon; neither will agents accept verbal routing instructions therefor; that initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted, except by consent of initial carrier, who will, thereupon, designate new routing when diversion necessitates change therein.

You will, therefore, commencing March 15th, 1900, please route transcontinental citrus fruit shipments originating on this company's lines, for the present, as follows:

First deduct business destined to non-competitive points on the Santa Fe system, Union Pacific Ry., Rio Grande Western Ry.
1069 Texas & Pacific Ry. Southern Pacific Company (Atlantic system) Houston & Texas Central railroad; the balance route:

Via Ogden	85 per cent.
Via El Paso	15 per cent.

Business via Ogden route:

Via Union Pacific Ry., and connections	70 per cent.
Via Rio Grande Western R. R. and connections	30 per cent.

The Union Pacific Ry.'s proportion route:

Via Chicago & Northwestern Ry.....	50 per cent.
Via Chicago, Milwaukee & St. Paul Ry.....	30 per cent.
Via Chicago, Rock Island & Pacific Ry.....	20 per cent.
The Rio Grande Western R. R.'s Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.....	70 per cent.
Via Colorado Midland Ry. Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.....	30 per cent.

NOTE.—Should it become necessary to give any Chicago business to the Rio Grande Western R. R. and connections, in order to give that route its allotment, as above, you will please route such business from Missouri river as follows:

Via Chicago & Northwestern Ry.....	60 per cent.
Via the Chicago, Milwaukee & St. Paul Ry.....	40 per cent.

The business via El Paso, excepting that via Southern Pacific Co. (Atlantic system), route:

Via Texas & Pacific Ry.....	100 per cent.

Texas & Pacific Ry. business for St. Louis and to points only reached via St. Louis, route:

1070 Via St. Louis, Iron Mountain & Southern Ry...	100 per cent.

Kansas City and Chicago business, or that destined to points reached via Chicago, route:

Via Chicago, Rock Island & Pacific Ry.....	50 per cent.
Via St. Louis & San Francisco R. R.....	25 per cent.
Via Missouri, Kansas & Texas Ry.....	25 per cent.

The St. Louis & San Francisco R. R. proportion via Kansas City route.

First deduct St. Louis & San Francisco R. R. locals on Kansas City line; balance route

Via Chicago, Rock Island & Pacific Ry.....	40 per cent.
Via Chicago, Milwaukee & St. Paul Ry.....	35 per cent.
Via Chicago & Alton R. R.....	15 per cent.
Via Chicago Great Western Ry.....	10 per cent.

The Missouri Kansas & Texas Ry. proportion route:

First deduct Missouri, Kansas & Texas Ry. locals; balance route:

Via Chicago, Rock Island & Pacific Ry.....	40 per cent.
Via Chicago, Milwaukee & St. Paul Ry.....	40 per cent.
Via Chicago Great Western Ry.....	10 per cent.
Via Wabash Ry. at Kansas City.....	10 per cent.

Business via St. Louis, Iron Mountain & Southern R. R. and Chicago, Burlington & Quincy Ry. system, via St. Louis, destined points east of St. Louis, route from St. Louis.

Via Wabash Ry. (Connection for New York business is Erie R. R.)	40 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry.	35 per cent.
Via Vandalia line	25 per cent.

1071 Traffic via Chicago, destined to points east of Chicago, via El Paso and Kansas City or Ogden, route from Chicago.

Lake Shore & Michigan Southern Ry.	10 per cent.	Care Erie R. R. at Buffalo.
Michigan Central Ry.	10 per cent.	
New York, Chicago & St. Louis Ry.	10 per cent.	
Grand Trunk Ry.	10 per cent.	
Star Union line	20 per cent.	
Baltimore & Ohio R. R.	20 per cent.	
Cleveland, Cincinnati, Chicago & St. Louis Ry.	20 per cent.	

NOTE.—The C. C. C. & St. L. Ry. you will observe is to receive 20 per cent. of the business via Chicago. Inasmuch as this line will not be able to handle, via Chicago, business destined to New York and New England points, but only to points in a southeasterly direction from Chicago, you will, therefore, as nearly as possible, give that line its percentage allotted via that gateway, out of the business destined to Indianapolis and Lafayette, Indiana; Louisville, Ky; Cincinnati, Springfield and Columbus, Ohio; also points on the Baltimore & Ohio R. R. including Baltimore, and points on the Chesapeake & Ohio R. R. You, of course, will not send any business destined to Richmond, Va., which is on the Chesapeake & Ohio R.R. via Chicago, but via Sunset route, N. O. & N. E., and Southern Ry. as directed herein.

Special Instructions.

Route Porter Brothers Company's business via Ogden, Union Pacific Ry. to the Missouri river.

To Chicago divide Chicago & Northwestern Ry.	50 per cent.
Chicago, Milwaukee & St. Paul Ry.	50 per cent.
New York business, route via Erie Ry. from Chicago	100 per cent.

Boston business for Porter Brothers Company route,

1072 From Chicago, via Erie Ry. care of Fitchburg Ry. 100 per cent.

Minneapolis business of this firm divide

Chicago, St. Paul, Minneapolis & Omaha Ry..	66⅔ per cent.
Chicago, Milwaukee & St. Paul Ry.....	33⅓ per cent.

Avoid routing any of this firm's business via the Lake Shore & Michigan Southern Ry., no matter what the destination of the business may be, excepting points only reached by the L. S. & M. S. Ry.

Business for E. P. Stacy & Sons, Minneapolis, route via Chicago, St. Paul, Minneapolis, & Omaha R. R.

NOTE.—It should be understood that instructions given to route business to any particular point via a specific line or lines, or that delivery should be given by any particular line, out of deference to shippers' preference, should be considered in the percentage allotted to those particular lines as per the above percentages, and not as an addition to the percentages above shown.

It is appreciated it will be difficult for you to route this business on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the very best you can, in line with the above named percents, which however, are liable to be changed at any time.

On days when but few cars are shipped, all may be routed via one route, and via another route the next day, and so on; but the result to be as above, as nearly as possible.

It should be obvious that business destined to a non-competitive point on some particular line should be routed via that line;
1073 but if that road is not mentioned in the percentage routing, it should be given the shortest haul. For example, a local point on the Missouri Pacific Ry. (which railroad company is unmentioned) located between Kansas City and St. Louis; the shipments destined such points should be routed care Missouri Pacific Ry. at Kansas City.

Specific Routings.

Boston business route from Chicago via Pennsylvania lines, New York, New Haven & Hartford R. R. care Fitchburg Ry. at Shelburne Falls.....	50 per cent.
Via Lake Shore & Michigan Southern Ry. West Shore Ry. care Fitchburg Ry. at Rotterdam Junction.....	50 per cent.

Chicago business, or business destined to points reached via Chicago must not be routed via St. Louis.

Cincinnati business via Chicago route

Cleveland, Cincinnati, Chicago & St. Louis Ry..	50 per cent.
Via Pennsylvania lines.....	50 per cent.

Fargo, S. D. business route via Great Northern Ry. from Sioux City.

Grand Forks business route via Great Northern Ry. from Sioux City.

Grand Rapids business route portion via the Michigan Central Ry., care of the Chicago & West Michigan Ry. at New Buffalo.

Minneapolis business, when forwarded via El Paso, route via Chicago, Milwaukee & St. Paul Ry., except business for E. P. Stacy & Sons & Porter Brothers Company, which route as per instructions set forth on page 4 of this letter.

1074 Minneapolis business, when forwarded via Ogden, route via Chicago, St. Paul, Minneapolis & Omaha Ry., excepting business for Porter Brothers Company, which route as per instructions on page 4 of this letter.

Omaha business route via Ogden.

Philadelphia business route via the Pennsylvania lines, via Chicago.

Pittsburg business route via the Pennsylvania lines via Chicago.

Richmond, Va., business route via Sunset route, care New Orleans & Northeastern R. R. and Southern Ry.

Savannah business route via Louisville & Nashville R. R. at New Orleans, care Central of Georgia Ry., Montgomery, Ala.

St. Louis business send via El Paso, Texas & Pacific Ry., St. Louis Iron Mountain & Southern Ry., unless shippers express preference for passing through markets reached via Ogden.

St. Paul business, when forwarded via Ogden, route via Chicago, St. Paul, Minneapolis & Omaha Ry.

Wichita business route via Chicago, Rock Island & Pacific Ry. from Fort Worth.

Winnipeg business route via Great Northern Ry. from Sioux City.

Delivering Lines.

On traffic to the following points, when shipped by the parties names, the delivering lines as shown must be used:

1075

Destination.	Preferred delivery.	When shipped by—
Albany, N. Y.	Delaware & Hudson Co.....	Earl Fruit Co.
Atlanta, Ga...	Southern Ry.	So. Cal. Fruit Exchange
Baltimore, Md.	Star Union Line.....	Earl Fruit Co.
" ...	B. & O. R. R.....	So. Cal. Fruit Exchange
" ...	"	Fay Fruit Co.
Birmingham, Ala.	So-thern Ry.....	So. Cal. Fruit Exchange
Buffalo, N. Y.	Michigan Central Ry.....	So. Cal. Fruit Exchange
" ...	Grand Trunk Ry.....	Fay Fruit Co.
" ...	Lake Shore & Mich. S. Ry.	Ruddock, Trench & Co.
" ...	"	Covina Orange G. Ass'n.

Destination.	Preferred delivery.	When shipped by—
Canadian points.	Grand Trunk Ry.....	So. Cal. Fruit Exchange
	"	Fay Fruit Co.
Chattanooga, Tenn.	Southern Ry.....	So. Cal. Fruit Exchange
Chicago, Ill....	C. M. & St. P. or C. & N. W.	Earl Fruit Co.
" ...	Chicago, Milwaukee & St. P.	Fay Fruit Co.
" ...	" ...	Ruddock, Trench & Co.
" ...	" ...	Briggs, Spence & Co.
" ...	" ...	Newhall & Sons
" ...	Chicago & N. W. Ry.....	Porter Brothers Co.
Cincinnati, O.	B. & O. Southwestern.....	So. Cal. Fruit Exchange
" ...	C. C. C. & St. L.....	Fay Fruit Co.
" ...	Star Union Line.....	Earl Fruit Co.
Cleveland, O..	N. Y. C. & St. L..	So. Cal. Fruit Exchange
" ...	"	Earl Fruit Co.
" ...	"	Fay Fruit Co.
" ...	C. C. C. & St. L.....	Covina Orange Growers Asn

1076

Columbus, O..	Pennsylvania lines.....	Fay Fruit Co.
" ...	Baltimore & Ohio S. W....	So. Cal. Fruit Exchange
Denver, Colo..	Union Pacific Ry.....	Fay Fruit Co.
Des Moines, Ia.	Chicago Great Western Ry.	So. Cal. Fruit Exchange
" ...	" ...	Ruddock, Trench & Co.
Detroit, Mich.	Mich. Centl. or L. S. & M. S.	So. Cal. Fruit Exchange
" ...	Grand Trunk Ry.....	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L.....	So. Cal. Fruit Exchange
Kansas City, Mo.	M K & T Ry.....	Fay Fruit Co.
Lima, O.	Lake Erie & Western Ry..	Covina Orange Grow. Assn.
"	Erie Ry.....	Altschul Bros. & Co.
Louisville, Ky.	B. & O. S. W. R. R.....	So. Cal. Fruit Exchange
Milwaukee, Wis.	C M & St. P.....	Fay Fruit Co.
Minneapolis, Minn.	C M & St. P.....	So. Cal. Fruit Exchange
" ...	"	Covina Orange Gro. Assn.
" ...	C. St. P. M. & Omaha R. R. (See special instructions pages 4, this letter)	Fay Fruit Co. Porter Bros. Co.

Destination.	Preferred delivery.	When shipped by—
New York.....	Erie Ry.....	So. Cal. Fruit Exchange
"	"	Covina Orange Grow. Assn.
"	"	Fay Fruit Co.
"	"	Ruddock, Trench & Co.
"	"	Porter Bros. Co.
"	"	Earl Fruit Co.
Omaha, Neb..	Union Pacific Ry.....	Fay Fruit Co.
" ...	"	So. Cal. Fruit Exchange
Philadelphia, Pa.	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange
" ...	Pennsylvania lines.....	Fay Fruit Co.
" ...	Lehigh Valley R. R.....	Ruddock, Trench & Co.
" ...	Philadelphia & Reading R. R.	Porter Bros. & Co.
" ...	" ...	Earl Fruit Co.
1077		
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.
" ...	Lehigh Valley R. R.....	Earl Fruit Co.
Sioux City, Ia.	Union Pacific Ry.....	So. Cal. Fruit Exchange
Springfield ...	Boston & Albany R. R.....	Earl Fruit Co.
St. Louis, Mo..	M. K. & T. Ry.....	Fay Fruit Co.
" ...	St. L. & S. F. R. R.....	Ruddock, Trench & Co.
St. Paul, Minn.	C. M. & St. Paul.....	So. Cal. Fruit Exchange
" ...	C. St. P. M. & O. R. R.....	Fay Fruit Co.
" ...	C. M. & St. P. or C. St. P. M. R. R.	Porter Bros. Co.
Syracuse, N. Y.	New York Central & H. R. R. R.	Ruddock, Trench & Co.
Utica, N. Y...	Delaware, Lackawanna & W.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio S. W....	So. Cal. Fruit Exchange
" ...	Star Union.....	Earl Fruit Co.
Waterloo, Ia..	Chicago, Great Western Ry.	So. Cal. Fruit Exchange

Please acknowledge receipt of this communication, obliging,

Yours truly,

G. W. L.

C. C. Mr. Wm. Sproule, Chicago:
Mr. W. G. Neimyer.

P. S.—Referring to the foregoing letter, which directs, under the head of "Specific routings" page 5, that Philadelphia business be routed *via* the Pennsylvania lines. Under the head of 'Delivering lines,' page 7, you will observe that Porter Brothers Co. and Earl

Fruit Co. prefer Philadelphia & Reading R. R. delivery of citrus fruit shipments destined Philadelphia. This will not prevent you, however, from routing via the Pennsylvania R. R. Co. care of the Philadelphia & Reading R. R. at Harrisburg, such shipments
1078 as are made by Porter Brothers Co. and the Earl Fruit Co.

Yours truly, G. W. L.

P. S. No. 2.—Should it become necessary to give any Chicago business

Superseding page 8 of letter dated 3–14–'00

to the Chicago, Rock Island & Pacific Ry., in order to give that route its allotment as shown herein, you will please route such business from Missouri river as follows:

Via El Paso:
Via Chicago, Milwaukee & St. Paul Ry..... 60 %
Via Chicago Great Western Ry..... 40 %

Yours truly, G. W. L."

1079 Also letter of March 27th, 1900, marked Complainant's Exhibit No. 32.

The document last offered is as follows:

"CPW. A–F 39652.

(Personal.)

MARCH 27TH, 1900.

Mr. Chas. Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

Routing of Citrus Fruit Shipments—Preferred Delivering Lines.

GENTLEMEN: Refer you to my letter of March 14th, on above subject:

You will note on pages 5 and 6 under the head 'Specific routings,' my instructions are to send Fargo and Grand Forks, N. D. business and also business destined Winnipeg, via the Great Northern Ry., from Sioux City. Please consider the instructions covering these three cities as cancelled, and in lieu thereof, route business destined

Fargo, North Dakota
Grand Rapids, North Dakota
Winnipeg, Manitoba,

Via Great Northern Ry., from Sioux City..... 50 per cent.
Via Northern Pacific Ry., from St. Paul..... 50 per cent.

Yours truly, G. W. L.

C. C. Mr. Wm. Sproule."

1080 Also letter of April 10th, 1900, marked Complainant's Exhibit No. 33.

The document last offered is as follows:

Copy.

"CPW. A-F 39652.

(Confidential.)

APRIL 10TH, 1900.

Mr. Chas. Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

NOTE.—*This letter cancels all previous routing and delivering line instructions, excepting letters February 27th covering citrus fruit traffic destined No. Pac. R. R. and O. R. & N. Co. common points and Utah common points.*

Routing of Citrus Fruit Shipments—Preferred Delivering Lines.

GENTLEMEN: Referring to Trans-continental freight bureau circular No. 21, effective January 1st, 1900, instructing that, commencing January 1st, 1900, agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon; neither will agents accept verbal routing instructions therefor; that initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted, except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will, therefore, commencing April 11th, 1900, please route trans-continental citrus fruit shipments originating on this company's lines, for the present, as follows:

First deduct business destined to non-competitive points on the Santa Fe system, Union Pacific Ry. Rio Grande Western Ry. Texas & Pacific Ry. Southern Pacific Co. (Atlantic system) Houston & Texas Central R. R. the balance route:

1081 Via Ogden..... 85 per cent.
Via El Paso..... 15 per cent.

Superseding page 2 my letter A-F-39652, of April 10th, 1900.

Business via Ogden route:

Via Union Pacific Ry. and connections..... 70 per cent.
Via Rio Grande Western R. R. and connections... 30 per cent.

The Union Pacific Ry.'s proportion route:

Via Chicago & Northwestern Ry..... 65 per cent.
Via Chicago, Milwaukee & St. Paul Ry..... 10 per cent.
Via Chicago, Rock Island, & Pacific Ry..... 25 per cent.

The Rio Grande Western R. R.'s proportion route:

Via Denver & Rio Grande R. R. Burlington & Missouri River R. R. and Chicago, Burlington & Quincy Ry.....	70 per cent.
Via Colorado Midland Ry. Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.....	30 per cent.

NOTE.—Should it become necessary to give any Chicago business to the Rio Grande Western R. R. and connections, in order to give that route its allotment, as above, you will please route such business from Missouri river as follows:

Via Chicago & Northwestern Ry.....	80 per cent.
Via Chicago, Milwaukee & St. Paul Ry.....	20 per cent."

1082 Also letter of April 30th, 1900, marked Complainant's Exhibit No. 34.

The document last offered is as follows:

Copy.

"CPW. A-F 39652.

(Confidential.)

APRIL 30TH, 1900.

Mr. Chas. Seyler, agent, Los Angeles, California.
Mr. D. A. Bruce, agent, Colton, California.

NOTE.—*This letter cancels all previous routing and delivering line instructions, excepting letters February 27th, covering citrus fruit traffic destined No. Pac. R. R. and O. R. & N. Co. common points and Utah common points.*

Routing of Citrus Fruit Shipments—Preferred Delivering Lines.

GENTLEMEN: Referring to Trans-Continental Freight Bureau circular No. 21, effective January 1st, 1900, instructing that, commencing January 1st, 1900, agents will not accept shipping orders or any other documents covering shipments of citrus fruit, if routing instructions are shown thereon; neither will agents accept verbal routing instructions therefor; that initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted, except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will, therefore, commencing May 1st, 1900, please route trans-continental citrus fruit shipments, originating on this company's lines, for the present, as follows:

First deduct business destined to non-competitive points on the Santa Fe system, Union Pacific Ry. Rio Grande Western Ry.
1083 Texas & Pacific R. R. Southern Pacific Co. (Atlantic system), Houston & Texas Central R. R. the balance route:

Via Ogden ..... 50 per cent.
Via El Paso ..... 50 per cent.

Business via Ogden route:

Via Union Pacific Ry. and connections ..... 70 per cent.
Via Rio Grande Western R. R. and connections.. 30 per cent.

The Union Pacific Ry.'s proportion route:

Via Chicago & Northwestern Ry..... 65 per cent.
Via Chicago, Rock Island & Pacific Ry..... 25 per cent.
Via Chicago, Milwaukee & St. Paul Ry..... 10 per cent.

The Rio Grande Western R. R.'s proportion route:

Via Denver & Rio Grande R. R., Burlington & Missouri River R. R., and Chicago, Burlington & Quincy Ry..... 70 per cent.
Via Colorado Midland Ry., Burlington & Missouri River R. R., and Chicago, Burlington & Quincy R. R..... 30 per cent.

NOTE.—Should it become necessary to give any Chicago business to the Rio Grande Western R. R. and connections, in order to give that route its allotment, as above, you will please route such business from Missouri river as follows:

Via Chicago & Northwestern Ry..... 80 per cent.
Via Chicago, Milwaukee & St. Paul Ry..... 20 per cent."

1084 Also letter of June 14th, 1900, marked Complainant's Exhibit No. 35.

The document last offered is as follows:

Copy.

"BS. A-039652.

(Private.)

JUNE 14, 1900.

Mr. Chas Seyler, agt., Los Angeles, California.
Mr. D. A. Bruce, agt., Colton, California.

Citrus Fruit Routing.

DEAR SIR: For the remainder of the season route Spokane citrus fruit shipments as follows:

50 per cent. to O. R. & N.
50 per cent. Northern Pacific Ry.

Preferred Delivery.

Destination.	Consignee.	Delivering line.
Spokane.	Ryan & Newton.	Northern Pacific.

In specifying the Northern Pacific as the preferred delivering line for Ryan & Newton's business it is not to be considered an addition of the Northern percentage, as above, but a portion thereof.

Yours truly,

G. W. L.

Cy. Mr. Sproule."

1083 Also letter of June 26th, 1900, marked Complainant's Exhibit No. 36.

The document last offered is as follows:

Copy.

"BS. A-F 39652.

(Confidential.)

Los Angeles, Cal., June 26, 1900.

Mr. Chas. Seyler, agt. S. P. Co., Los Angeles, Cal.
Mr. D. A. Bruce, agt. S. P. Co., Colton, California.

Routing Citrus Fruit Shipments—Preferred Delivering Lines.

Gentlemen: This letter will cancel page No. 2, of my letter of instructions to you under date of April 30, 1900.

Business via the Ogden route:

Via Union Pacific Ry. and connections..... 70 per cent.
Via Rio Grande Western R. R. and connections.. 30 per cent.

The Union Pacific Ry.'s proportion route, as follows:

Via Chicago & Northwestern Ry..... 100 per cent.

(Route only via Chicago, Rock-Island & Pacific and Chicago, Milwaukee & St. Paul, when those lines are shown on pages 7 and 8, April 30th, letter, as preferred delivering lines of certain shippers.)

The Rio Grande Western R. R.'s proportion route, as follows:

Via Denver & Rio Grande R. R. Burlington & Missouri River R. R. and Chicago Burlington & Quincy Ry..... 70 per cent.
Via Colorado Midland Ry. Burlington & Missouri River R. R. and Chicago Burlington & Quincy R. R..... 30 per cent.

1086 NOTE.—Should it become necessary to give any Chicago business to the Rio Grande Western R. R. and connections, in order to give that route its allotment, as above, you will please route such business from Missouri river as follows:

Via Chicago & Northwestern Ry..... 100 per cent.

Yours truly,

G. W. LUCE.
O.

Cy. W. S.
W. G. N."

1087 Also letter of June 26th, 1900, marked Complainant's Exhibit No. 37.

The document last offered is as follows:

Copy.

"BS. A-F 39652.

(Confidential.)

JUNE 26TH, 1900.

Mr. Charles Seyler, agt. S. P. Co., Los Angeles, Cal.
Mr. D. A. Bruce, agt. S. P. Co., Colton, Cal.

Routing Citrus Fruit Shipments—Preferred Delivering Lines.

GENTLEMEN: This letter will cancel page No. 2 of my letter of instructions to you under date of April 30th, 1900.

Business via the Ogden route:

Via Union Pacific Ry. and connections..... .. 70 per cent.
Via Rio Grande Western R. R. and connections.. 30 per cent.

The Union Pacific Ry.'s proportion route, as follows:

Via Chicago & Northwestern Ry ..... 100 per cent.

(Route only via Chicago, Rock Island & Pacific and Chicago, Milwaukee & St. Paul, when those lines are shown on pages 7 and , April 30th letter, as preferred delivering lines of certain shippers.

The Rio Grande Western R. R.'s proportion route, as follows:

Via Denver & Rio Grande R. R. Burlington & Missouri River R. R. and Chicago, Burlington & Quincy Ry..... 70 per cent.

Via Colorado Midland Ry., Burlington & Missouri River R. R. and Chicago Burlington & Quincy R. R..... 30 per cent.

NOTE.—Should it become necessary to gice any Chicago business to the Rio Grande Western R. R. and connections in order to
1088 give that route its al-ottment, as above, you will please route such business from Missouri river as follows:

Via Chicago & Northwestern Ry..... 100 per cent.

Yours truly,

G. W. L.
O.

Cy. W. S.
W. G. N."

1089 Also letter of September 17th, 1900, marked Complainant's Exhibit No. 38.
The document last offered is as follows:

Copy.

"BS. B–039652

SEPTEMBER 17TH, 1900.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

GENTLEMEN: Until further notice you will route via the Rio Grand Western and its connections, all shipments of citrus fruit destined to territory reached via the Ogden gate-way.

Divide such shipments beyond Grand Junction in accordance with current instructions.

Yours truly,

G. W. L.
O.

C. C. to Mr. Sproule."

1090 Q. Have you the routing instructions for the year commencing January, 1901?
A. (Witness hands document to counsel.)

Mr. CALL: I also offer the several letters dated commencing October 30th, 1900, and ending July 29, 1901, embraced in one file, and marked Complainant's Exhibit 39.
The document last offered is as follows:

1091 (2–17–00—2 M.)
Subject:
(Southern Pacific Company.
Sunset, Ogden & Shasta routes.)

2 TG. 90.
Office
Asst. gen. frt. & pass. agent,
Pacific system.
261 South Spring street,
(Douglas building.)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Interstate rates are subject to provisions of interstate commerce law.

Unless otherwise agreed, all local rates are subject to change without further notice.

Most of this company's freight cars are built to carry twenty to thirty tons weight. Never load less than 12 tons. If shippers load to weight capacity, which is plainly marked on sides of car, it will do much to obviate delay in furnishing cars for loading and prevent detention in transit. Do not load to exceed weight capacity.)

BS.

In your reply, please refer to A–016000.

(Confidential.)

LOS ANGELES, CAL., October 30th, 1900.

Mr. Chas. Seyler, ag't, Los Angeles, Cal.
Mr. D. A. Bruce, ag't, Colton, California.

Routing Citrus Fruit Shipments.

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff, No. S. R. 240, effective April 20th, 1900, announcing 'in guaranteeing the through rates named herein, the
1092 absolute and unqualified right of routing beyond its own terminals, is reserved to initial carrier giving guarantee.'

Also Trans-continental Freight Bureau circular No. 21, effective January 21st, 1900, advising that agents will not accept shipping orders, or other documents covering shipments of citrus fruits, if routing instructions are shown thereon. Neither will agents accept verbal routing therefor; that initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will therefore please route Trans-continental shipments of citrus fruit, originating on this company's line, for the present, as follows:

First, deduct business destined to non-competitive points on the Santa Fe system, Union Pacific railway, Rio Grande Western railway, Texas & Pacific railway, Southern Pacific railway (Atlantic system), and the Houston & Texas Central railroad.

The balance route:

Via El Paso	90 per cent.
Via Ogden	10 per cent.

El Paso shipments, route:

Via Texas & Pacific Ry	100 per cent.

Texas & Pacific Ry. business route:

Via St. Louis, Iron Mt. & Southern Ry. at Texarkana ..... 30 per cent.
Via St. Louis & San Francisco R. R. at Paris, Tex ..... 20 per cent.
Via Chicago, Rock-Island & Texas Ry. at Fort Worth ..... 30 per cent.
Via Missouri, Kansas & Texas Ry. at Fort Worth ..... 20 per cent.

1093 St. Louis, Iron Mt. & Southern Ry. proportion route:

Via St. Louis..... 100 per cent.

St. Louis & San Francisco Ry. proportion, route:

Via St. Louis..... 100 per cent.

Chicago, Rock-Island & Texas Ry. proportion, route:

Via Chicago, Rock-Island & Pacific Ry..... 100 per cent.

Missouri, Kansas & Texas Ry. proportion, route:

Via Kansas City..... 70 per cent.
Via St. Louis..... 30 per cent.

Business via Kansas City, route:

Via Chicago, Milwaukee & St. Paul R. R..... 60 per cent.
Via Chicago Great Western Ry..... 20 per cent.
Via Chicago & Alton Ry..... 20 per cent.

(Give the Chicago, Milwaukee & St. Paul its allotment, as nearly as can be, of business destined Chicago. This will necessitate you routing Chicago business, to that extent at least via the Missouri, Kansas & Texas Ry.)

That via St. Louis, route: (See below)

Business via St. Louis, Iron-Mt. & Southern Ry., St. Louis & San Francisco Ry., and Missouri, Kansas & Texas Ry., via St. Louis to Chicago, route:

Via Wabash R. R..... 70 per cent.
Via Chicago & Alton Ry..... 30 per cent.

Business via St. Louis, to points east thereof, (except Chicago), route:

Via Wabash (connections for New York business is Erie R. R. and connections for Boston, and other New England business is Canadian
1094 Pacific Ry., at Detroit, for Boston business, Boston & Main R. R. delivery)..... 25 per cent.
Via Pennsylvania lines ..... 25 per cent.
Via Baltimore & Ohio Southwestern Ry..... 25 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry..... 25 per cent.

Traffic destined to points east of Chicago, via El Paso or Ogden, from Chicago route:

Via Lake Shore & Michigan Southern Ry.	15 per cent.	c/o Erie railroad at Buffalo, N. Y.
Via Michigan Central Ry.	12.5 per cent.	
Via New York, Chicago & St. Louis Ry.	12.5 per cent.	
Via Grand Trunk Ry.	20 per cent.	
Via Pennsylvania lines.	20 per cent.	
Via Baltimore & Ohio Ry.	20 per cent.	

Business via Ogden:

It is expected that specific routing (see page 4), will give to the Ogden route its full proportion of 10 per cent.

Specific Routing.

Boston shipments, route:

In care of Boston & Maine Ry. (Fitchburg division) at Rotterdam Jct., Mechanicsville, Shelburne Falls, or, when routed via the Canadian Pacific Ry., at Newport.

Duluth shipments, route:

Via St. Paul and Duluth R. R ..... 50 per cent.
Via Great Northern Ry. from Sioux City..... 50 per cent.

(Business to be routed via Great Northern Ry. to Duluth should be routed via Union Pacific Ry. to Sioux City.)

Fargo, S. D., shipments, route:

Via Great Northern Ry. from Sioux City..... 50 per cent.
Via Northern Pacific Ry. from St. Paul..... 50 per cent.

(Business routed via Great Northern Ry., route via Union Pacific Ry. to Sioux City.)

1095 Fort Dodge, Ia., shipments, route:

Via Union Pacific Ry. to Council Bluffs, thence via the Illinois Central R. R.

Grand Forks, N. D., shipments, route:

Via Great Northern Ry. from Sioux City..... 50 per cent.
Via Northern Pacific Ry. from St. Paul..... 50 per cent.

(Business routed via Great Northern Ry. route, via Union Pacific Ry. to Sioux City.)

Grand Rapids shipments, route:

A portion via the Michigan Central Ry., in care Chicago & West Michigan Ry., at New Buffalo.

Hartford, Conn., shipments, via Chicago, route:

Via Lake Shore & Michigan Southern Ry., West Shore R. R., care Central New England Ry. at Kingston.

Via St. Louis, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry., Lake Shore & Michigan Southern Ry., West Shore R. R., care Central New England Ry., at Kingston.

Omaha shipments, route:

Via Ogden.

Philadelphia shipments, route:

Via Pennsylvania lines.

Pittsburg shipments, route:

Via Pennsylvania lines.

Sioux City shipments, route:

Via Union Pacific Ry.

Wichita shipments, route:

Via Chicago, Rock-Island & Pacific Ry., from Fort Worth.

1096 Winnipeg shipments, route:

Via Great Northern Ry. from Sioux City..... 50 per cent.
Via Northern Pacific Ry. from St. Paul..... 50 per cent.

(Business routed via Great Northern Ry. to Winnipeg route via Union Pacific Ry. to Sioux City.)

Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line, as shown, must be used:

Destination.	Preferred delivery.	When shipped by—
Albany, N.Y..	Delaware & Hudson Co...	Earl Fruit Co.
Atlanta, Ga...	Southern railway.....	So Cal. Fruit Exc.
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
" ...	Baltimore & Ohio R. R....	So. Cal. Fruit Exc.
" ...	"	Fay Fruit Co.
Birmingham, Ala.	Southern railway.....	So. Cal. Fruit Exc.
Buffalo, N.Y..	Lake Shore & Michigan Sou Ry.	So Cal Fruit Exc.
" ...	Grand Trunk Ry.....	Fay Fruit Co.
" ...	Lake Shore & Michigan Sou. Ry.	Ruddock, Trench & Co.
" ...	"	Covina O. G. Ass'n.

Destination.	Preferred delivery.	When shipped by—
Canadian points.	Grand Trunk Ry.....	So. Cal. Fruit Co. Exc.
" ...	"	Fay Fruit Co.
Chicago, Ill...	C. M. & St. P. or C. & N. W.	Earl Fruit Co.
" ...	Chicago, Milwaukee & St. Paul Ry.	Fay Fruit Co.
" ...	"	Ruddock, Trench & Co.
" ...	"	Briggs, Spence Co.
" ...	"	Newhall & Sons
" ...	Chicago & Northwestern Ry.	Porter Bros. Co.
Cincinnati, O.	Baltimore & Ohio Southwestn Ry.	So Cal Fruit Exc.
1097		
Cincinnati, O..	C. C. C. & St. L. Ry.....	Fay Fruit Co.
" ...	Pennsylvania lines	Earl Fruit Co.
" ...	"	Ruddock, Trench & Co. to Hammer & Co.
Columbus, Ohio.	Pennsylvania lines	Fay Fruit Company.
" ...	Baltimore & Ohio Southwestn Ry.	So. Cal. Fruit Exc.
Denver, Colo..	Union Pacific Ry.....	Fay Fruit Company
Des Moines, Iowa.	Chicago Great Western.....	So. Cal. Fruit Exc.
" ...	"	Ruddock Trench & Co.
Detroit, Mich..	Mich. Cent'l or L. S. & M. S. Ry.	So. Cal. Fruit Exc.
" ...	Grand Trunk Ry.....	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L.....	So. Cal. Fruit Exc.
Lima, Ohio. ..	Lake Erie & Western Ry..	Covina O. G. Ass'n
" ...	Erie railway.....	Altschul Bros. & Co.
Louisville, Ky.	Baltimore & Ohio Southwestn Ry.	So. Cal. Fruit Exc.
Milwaukee, Wis.	Chicago, Milwaukee & St. Paul Ry.	Fay Fruit Co.
Minneapolis, Minn.	Chicago, Milwaukee & St. Paul Ry.	So. Cal. Fruit Exc.
" ...	"	Covina O. G. Ass'n.
" ...	C. St. P. M. & O. R. R.....	Fay Fruit Co.
" ...	" and C M & St P Ry..	Porter Bros. & Co.
New York city	Erie railway..... ..	So. Cal. Fruit Exc.
" ...	"	Covina O. G. Ass'n.

Destination.	Preferred delivery.	When shipped by—
New York city	Erie railway.....	Fay Fruit Company.
" ...	"	Ruddock Trench & Co.
" ...	"	Porter Bros. Co.
" ...	"	Earl Fruit Co.
Omaha, Neb..	Union Pacific Ry.....	Fay Fruit Co.
" ...	"	So. Cal. Fruit Exc.
1098		
Philadelphia, Pa.	Baltimore & Ohio R. R...	So. Cal. Fruit Exc.
" ...	" ...	Covina O. G. Ass'n.
" ...	Pennsylvania lines.....	Fay Fruit Co.
" ...	Lehigh Valley R. R.....	Ruddock Trench & Co.
" ...	Philadelphia & Reading Ry.	Porter Bros. Co.
" ...	" ...	Earl Fruit Co.
Pittsburg, Pa..	Baltimore & Ohio R. R...	So. Cal. Fruit Exc.
" ...	Pennsylvania lines.....	Earl Fruit Co.
" ...	"	Fay Fruit Co.
" ...	"	A. Gregory.
" ...	"	Moulton & Greene.
" ...	"	Sandiland Bros.
" ...	"	Sparr Fruit Co.
" ...	"	Briggs Spence Co.
" ...	"	Covina O. G. Ass'n.
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.
" ...	Lehigh Valley R. R.....	Earl Fruit Co.
Sioux City, Iowa.	Union Pacific Ry.....	So. Cal. Fruit Exc.
Springfield, Mass.	Boston & Albany R. R.....	Earl Fruit Co.
St. Louis, Mo.	St. Louis & San Francisco, Ry.	Ruddock Trench & Co.
St. Paul, Minn.	Chicago, Milwaukee & St. Paul Ry.	So. Cal. Fruit Exc.
" ...	C. St. P. M. & O. R. R.....	Fay Fruit Co.
" ...	C. M. & St. P. or C. St. P. M. & O. R. R.	Porter Bros. Co.
Syracuse, N. Y.	N. Y. C. & H. R. R. R.....	Ruddock Trench & Co.
Utica, N. Y...	D. L. & W. R. R.....	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R...	So. Cal. Fruit Exc.
" ...	Pennsylvania lines.....	Earl Fruit Co.
Waterloo, Ia.	Chicago Great Western Ry.	So. Cal. Fruit Exc.

1099 Preferred Deliveries by Switching Service.

Pages 6 and 7 show shippers' *preferred delivering lines in* various cities. At points shown below, such preferred deliveries may be effected by switching service, therefore, to prevent a line receiving more than its allotment, business may be routed via another line, and desired delivery be given.

Point.	Lines who will perform switching for each other.
Kansas City, Mo.....	St. Louis & San Francisco railway Missouri, Kansas & Texas railway Chicago, Rock-Island & Pacific railway
St. Louis, Mo.....	Wabash railroad St. Louis & San Francisco railway St. Louis, Iron Mountain & Southern railway Missouri, Kansas & Texas railway Chicago & Alton railway
Chicago, Ill.....	Chicago Milwaukee & St. Paul railway Chicago & Northwestern railway Illinois Central railroad Wabash railway Chicago Burlington & Quincy railroad Chicago Rock-Island & Pacific railway Chicago, Greatwestern railway Chicago & Alton railway
Cincinnati, Ohio.....	Pennsylvania Company Baltimore & Ohio railroad C. C. C. & St. L. railway.
Buffalo, N. Y.....	Michigan Central railway Lake Shore railway New York Chicago & St. Louis railway (New York Central & Hudson River railroad performs all switching service for the three lines above named. Hence those lines have no deliveries in Buffalo, excepting in the New York Central's freight depot or team tracks. Hence the lines then performing switching would be the New York Central & Hudson River R. R. and Grand Trunk railway) Grand Trunk railway.

1100

NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" or "delivering line instructions" must be adhered to; however, should they conflict, "delivering lines' instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

1101 NOTE 4.—Instructions under the head of "Specific routings" (page 4) direct that Philadelphia business be routed via the Pennsylvania lines, and "delivering lines' instructions" are that Porter Bros. Company and Earl Fruit Compant prefer Philadelphia & Reading Railroad delivery of citrus fruit shipments destined Philadelphia: This will not prevent you, however, from routing via the Pennsylvania Railroad Company, cars of the Philadelphia & Reading at Harrisburg, such shipments as are made by Porter Bros. Co. and the Earl Fruit Co.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the very best you can, in lines with these instructions, which, however, are liable to be changed at any time. When but few cars are shipped, all may be routed one day via one route, via another route the next day, and so on: But the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given the shortest haul.

Yours truly,

G. W. LUCE.

N. B.—Acknowledge receipt by return mail.
C. C. to Mr. Wm. Sproule, F. T. M., San Francisco.
Mr. W. G. Neimyer, G. W. A., Chiago.

1102 (2-17-'00-2 M.)

2. TG. 90.

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass agent,
Pacific system.
261 South Spring street,
(Douglas building.)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Interstate rates are subject to provisions of interstate commerce law.

Unless otherwise agreed, all local rates are subject to change without further notice.

Most of this company's freight cars are built to carry twenty to thirty tons weight. Never load less than 12 tons. If shippers load to weight capacity, which is plainly marked on sides of car, it will

do much to obviate delay in furnishing cars for loading and prevent detention in transit. Do not load to exceed weight capacity.)
BS

In your reply, please refer to A–016000.

(Confidential.)

LOS ANGELES, CAL., October 30th, 1900.

Mr. Chas. Seyler, agt., Los Angeles, Cal.
Mr. D. A. Bruce, agt., Colton, Cal.

Routing Citrus Fruit Shipments.

GENTLEMEN: Referring to my letter this date on the above subject: Commencing November 1st, 1900, you will please route all shipments citrus fruit, destined Colorado common points, as follows:

1103 Via Union Pacific system..... 40 per cent.
Via Rio Grande Western railway..... 60 per cent.

The Rio Grande Western Ry. portion, route:

Via Colorado Midland R. R..... 50 per cent.
Via Denver & Rio Grande Ry..... 50 per cent.

Business to Salt Lake City, Utah, route:

Via Rio Grande Western Ry..... 100 per cent.

Specific Routing.

Spokane shipments, route:

Via Oregon Railway & Navigation Co..... 50 per cent.
Via Northern Pacific Ry..... 50 per cent.

Preferred Deliveries.

Destination.	Preferred delivery.	Consignee.
Spokane, Wash.	Northern Pacific railway.	Ryan & Newton.

Yours truly,
(Signed)
G. W. LUCE.
2. TG. 90.

1104 (7–6–'00–2M.)

Subject:
(Southern Pacific Company, Sunset, Ogden, & Shasta routes.)

Office
Asst. gen. frt. & pass. agent
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on

1110 Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line, as shown, MUST BE USED.

Destination.	Preferred delivery.	When shipped by—
Albany, N. Y.	Delaware & Hudson Co...	Earl Fruit Co.
Atlanta, Ga...	Southern railway.....	So. Cal. Fruit Exc.
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
"	... Baltimore & Ohio R. R...	So. Cal. Fruit Exc.
"	... Baltimore & Ohio R. R...	Fay Fruit Co.
"	... Michigan Central Ry.....	So. Cal. Fruit Exc.
Birmingham, Ala.	Southern railway.....	So. Cal. Fruit Exc.
Buffalo, N. Y.	Lake Shore & Michigan Southern Ry.	So. Cal. Fruit Exc.
"	... Grand Trunk Ry.....	Fay Fruit Co.
"	... Lake Shore & Michigan Southern Ry.	Ruddock Trench & Co.
"	... Lake Shore & Michigan Southern Ry.	Covina O. G. Assn.
Canadian points.	Grand Trunk Ry.....	So. Cal. Fruit Exc.
"	... Grand Trunk Ry.....	Fay Fruit Co.
Chicago, Ill...	Chicago, Milwaukee & St. Paul Ry. or Chicago & Northwestern.	Earl Fruit Co.
"	... Chicago, Milwaukee & St. Paul Ry.	Fay Fruit Co.
"	... Chicago, Wilwaukee & St. Paul Ry.	Ruddock Trench & Co.
"	... Chicago & Northwestern	
"	... Illinois Central.....	
"	... Chicago & Northwestern Ry.	Porter Bros.

1111

Cincinnati, O.	Baltimore & Ohio Southwestern Ry.	So. Cal. Fruit Exc.
"	... Cleveland, Cin'ti, Chicago & St L. Ry.	Fay Fruit Co.
"	... Pennsylvania lines.....	Earl Fruit Co.
"	... Pennsylvania lines.....	Ruddock Trench & Co. to Hammer & Co.
Columbus, O..	Pennsylvania lines.....	Fay Fruit Co.
"	... Baltimore & Ohio Southwestern Ry.	So. Cal. Fruit Exc.
Denver, Colo..	Union Pacific Ry.....	Fay Fruit Co.

Destination.	Preferred delivery.	When shipped by—
Des Moines, Ia.	Chicago Great Western....	So. Cal. Fruit Exc.
" ...	Chicago Great Western....	Ruddock Trench & Co.
Detroit, Mich.	Michigan Central Ry. or Lake Shore & Michigan Southern Ry.	So. Cal. Fruit Exc.
" ...	Grand Trunk railway.....	Fay Fruit Co.
" ...	Baltimore & Ohio railway	Ruddock Trench & Co.
Indianapolis, Ind.	Clev'd, Cincin'ti C & St Louis Ry.	So. Cal. Fruit Exc.
Lima, Ohio...	Lake Erie & Western Ry.	Covina O. G. Assn.
" ...	Erie railway.....	Altschul Bros. & Co.
Louisville, Ky.	Baltimore & Ohio Southwestern Ry.	So. Cal. Fruit Exc.
Milwaukee, Wis.	Chicago, Milwaukee & St. Paul Ry.	Fay Fruit Co.
Minneapolis, Minn	Chicago, Milwaukee & St. Paul Ry.	So. Cal. Fruit Exc.
" ...	Chicago, Milwaukee & St. Paul Ry.	Covina O. G. Assn.

1112

Minneapolis, Minn.	C. St. P. M. & O. R. R.....	Fay Fruit Co.
" ...	C. St. P. M. & O. R. R. and C. M. & St. P.	Porter Brothers Co.
" ...	Minneapolis & St. Louis Ry.	Ruddock Trench & Co.
New York city	Erie railway.....	So. Cal. Fruit Exc.
" ...	Erie railway.....	Covina O. G. Ass'n
" ...	Erie railway.....	Fay Fruit Co.
" ...	Erie railway.....	Ruddock Trench & Co.
" ...	Erie railway.....	Porter Brothers Co.
" ...	Erie railway.....	Earl Fruit Co.
Omaha Neb.,	Union Pacific Ry.....	Fay Fruit Co.
" ...	Union Pacific Ry	So. Cal. Fruit Exc.
Philadelphia, Pa.	Baltimore & Ohio R. R....	So. Cal. Fruit Exc.
" ...	Baltimore & Ohio R. R....	Covina O. G. Ass'n.
" ...	Pennsylvania lines.....	Fay Fruit Co.
" ...	Lehigh Valley R. R.....	Ruddock Trench & Co.
" ...	Philadelphia & Reading Ry.	Porter Brothers Co.
" ...	Philadelphia & Reading Ry.	Earl Fruit Co.

Destination.	Preferred delivery.	When shipped by—
Pittsburg, Pa..	Baltimore & Ohio R. R.....	So. Cal. Fruit Exc.
" ...	Pennsylvania lines.....	Earl Fruit Co.
" ...	Pennsylvania lines.....	Fay Fruit Co.
" ...	Pennsylvania lines..... ...	A. Gregory.
" ...	Pennsylvania lines.....	Moulton & Greene.
" ...	Pennsylvania lines.....	Sandiland Bros.
" ...	Pennsylvania lines.....	Sparr Fruit Co.
" ...	Pennsylvania lines.....	Covina O. G. Ass'n.
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.

1113

Rochester, N. Y.	Lehigh Valley R. R.....	Earl Fruit Co.
Sioux City, Ia.	Union Pacific Ry..... .	So. Cal. Fruit Exc.
Springfield, Mass.	Boston & Albany R. R....	Earl Fruit Co.
St. Louis, Mo..	St. Louis & San Francisco Ry.	Ruddock Trench & Co.
St. Paul, Minn.	Chicago, Milwaukee & St. Paul Ry.	So. Cal. Fruit Exc.
" ...	C. St. P. M. & O. railroad.	Fay Fruit Co.
" ...	C. St. P. M. & O. R. R. and C. M. & St. P.	Porter Brothers Co.
Syracuse, N. Y.	New York Central & Hudson River R. R.	Ruddock Trench & Co.
Utica, N. Y....	Delaware, Lackawanna & Western R. R.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R....	So. Cal. Fruit Exc.
"	Pennsylvania Lines	Earl Fruit Co.
Waterloo, Ia..	Chicago Greatwestern Ry.	So. Cal. Fruit Exc.

Preferred Deliveries by Switching Service.

Pages 6 and 7 show shippers' *preferred delivering lines* in various cities. At points shown below, such preferred deliveries may be effected by switching service, therefore, to prevent a line receiving more than its allottment, business may be routed via another line, and deirsed delivery be given:

Point.	Lines who will perform switching for each other.
Kansas City.....	St. Louis & San Francisco railway. Missouri Kansas & Texas railway. Chicago Rock-Island & Pacific Ry.
1114	
St. Louis, Mo.....	Wabash railroad. St. Louis Iron Mountain & Southern Ry. St. Louis & San Francisco railway. Missouri Kansas & Texas railway. Chicago & Alton railway.
Chicago, Ill.....	Chicago Milwaukee & St. Paul railway. Chicago & Northwestern railway. Illinois Central railroad. Wabash railroad. Chicago Burlington & Quincy railroad. Chicago Rock-Island & Pacific railray. Chicago Greatwestern railway. Chicago & Alton railrway.
Cincinnati, Ohio.....	Pennsylvania Company. Baltimore & Ohio railroad. C. C. C. & St. L. railway.
Buffalo, N. Y.....	Grand Trunk railway. Lake Shore & Michigan Southern railway. Michigan Central railway. New York Chicago & St. Louis railway. (New York Central & Hudson River R. R. performs all switching service for the three lines last named. Hence those lines have no deliveries in Buffalo, excepting in the New York Central's freight depot or team track: Lines therefore, performing switching would be the New York Central & Hudson River and the Grand Trunk railway.
1115	

NOTE 1.—No line's allottment is to be increased through specific routings, or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 4 and 5) or "Delivering line instructions" (see pages 6 and 7), must be adhered to: Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allottment.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof: But you are to do the very best you can, in lines with these instructions,—which, however, are liable to be changed at any time.

When but few cars are shipped, all may be routed one day via one route, via another route the next day, and so on: But the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line;
1116 but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly,
(Signed) G. W. LUCE.

N. B.—Acknowledge receipt by return mail.

C. C. to Mr. William Sproule, F. T. M.—San Francisco.
Mr. W. G. Neimyer, G. W. A. Chicago, Ill.

1117 (7-6-'00—2M.) 2. TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building.)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

B. S.

In your reply please refer to A-016000.

Confidential.

Los Angeles, Cal., December 3rd, 1900.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, California.

Routing of Citrus Fruit Shipments South of Mojave.

Gentlemen: Referring to my letter this date on the above subject: Commencing December 10th, 1900, you will please route all shipments of citrus fruit destined Colorado common points as follows:

Via Union Pacific R. R..... 20 per cent.
Via Rio Grande Western Ry..... 80 per cent.

1118 Rio Grande Western proportion route

Via Denver & Rio Grande R. R..... 66⅔ per cent.
Via Colorado Midland Ry..... 33⅓ per cent.

Specific Routing.

Salt Lake City shipments route

Via Rio Grande Western Ry..... .... 60 per cent.
Via Oregon Short Line Co..... 40 per cent.

Yours truly,

G. W. LUCE.

P. S.—Acknowledge receipt by return mail.

CC. Mr. William Sproule, F. T. M., San Francisco, Cal.
Mr. W. G. Neimyer, G. W. A., Chicago, Ill.

1119 (7-6-'00—2M.) 2 TG. 90.

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system.
261 South Spring street,
(Douglas building.)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc.

In your reply please refer to A-016000

(Confidential.)

LOS ANGELES, CAL., Dec. 29th, 1900.

NOTE.—*This letter cancels all previous routing and delivering line instructions.*

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 262, effective December 10th, 1900, announcing:

When but few cars are shipped, all may be routed one day via one route, via another route the next day, and so on: But the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line;
1116 but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly,

(Signed) G. W. LUCE.

N. B.—Acknowledge receipt by return mail.

C. C. to Mr. William Sproule, F. T. M.—San Francisco.
Mr. W. G. Neimyer, G. W. A. Chicago, Ill.

1117 (7-6-'00—2M.) 2. TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building.)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

B. S.

In your reply please refer to A-016000.

Confidential.

LOS ANGELES, CAL., December 3rd, 1900.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, California.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to my letter this date on the above subject: Commencing December 10th, 1900, you will please route all shipments of citrus fruit destined Colorado common points as follows:

Via Union Pacific R. R..... ..... 20 per cent.
Via Rio Grande Western Ry..... 80 per cent.

1118 Rio Grande Western proportion route

Via Denver & Rio Grande R. R..... 66⅔ per cent.
Via Colorado Midland Ry..... 33⅓ per cent.

Specific Routing.

Salt Lake City shipments route

Via Rio Grande Western Ry..... .... 60 per cent.
Via Oregon Short Line Co..... 40 per cent.

Yours truly, G. W. LUCE.

P. S.—Acknowledge receipt by return mail.

CC. Mr. William Sproule, F. T. M., San Francisco, Cal.
Mr. W. G. Neimyer, G. W. A., Chicago, Ill.

1119 (7-6-'00—2M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system.
261 South Spring street,
(Douglas building.)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc.

In your reply please refer to A-016000

(Confidential.)

Los Angeles, Cal., Dec. 29th, 1900.

Note.—*This letter cancels all previous routing and delivering line instructions.*

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

Gentlemen: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 262, effective December 10th, 1900, announcing:

minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

BS

In your reply, please refer to A-016000

Confidential.

NOTE.—*This letter cancels all previous routing and delivering line instructions.*

LOS ANGELES, CAL., December 3rd, 1900.

Mr. C. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 262, effective December 10th, 1900, announcing:

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is
1105 reserved to initial carrier giving guarantee."

Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit if routing instructions are shown thereon. Agents will therefore not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will, therefore, commencing December 10th, 1900, please route Trans-continental shipments of citrus fruit, originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system
Union Pacific railroad
Rio Grande Western railway
Texas & Pacific railway
Southern Pacific Ry., (Atlantic system, inc. New Orleans.)
Houston & Texas Central railroad.

The remainder, route

Via El Paso	90 per cent.
Via Ogden	10 per cent.

Business via El Paso, route

Via Texas & Pacific Ry..... ..... 100 per cent.

1106 Texas & Pacific Railway business, route

Via St. Louis, Iron Mountain & Southern Ry., at Texarkana, Tex .... 25 per cent.
Via St. Louis & San Francisco R. R., at Paris, Tex..... 25 per cent.
Via Chicago, Rock Island & Texas Ry., at Ft. Worth, Tex..... ..... 30 per cent.
Via Missouri, Kansas & Texas Ry., at Ft. Worth, Tex..... ..... 20 per cent.

St. Louis, Iron Mountain & Southern Ry. proportion, route

Via St. Louis..... 100 per cent.

St. Louis & San Francisco Ry. proportion, route

Via St. Louis..... ..... 100 per cent.

Chicago, Rock-Island & Texas Ry. proportion, route

Via Chicago, Rock-Island & Pacific Ry..... 100 per cent.

Missouri, Kansas & Texas Ry. proportion, route

Via Kansas City ..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion, via Kansas City, route

Via Chicago, Milwaukee & St. Paul R. R..... 60 per cent.
Via Chicago, Great Western Ry..... 20 per cent.
Via Chicago & Alton Ry..... 20 per cent.

(Give the Chicago, Milwaukee & St. Paul its allotment, as nearly can be, of business destined Milwaukee and Chicago.)

Missouri, Kansas & Texas Ry. proportion, via St. Louis, to or via Chicago, route

Via Wabash R. R..... 70 per cent.
Via Chicago & Alton Ry .. .. 30 per cent.

St. Louis, Iron Mt. & Southern Ry., and St. Louis & San Francisco Railway, via St. Louis to Chicago, route

Via Wabash R. R..... 70 per cent.
Via Chicago & Alton Ry..... ..... 30 per cent.

1107 Business destined east of Chicago, route from Chicago

Via Lake Shore & Michigan Southern Ry. (to Buffalo) .... 20 per cent.
Via Michigan Central Ry. (to Buffalo)..... 20 per cent.

Via New York, Chicago & St. Louis Ry. (to Buffalo)	20 per cent.
Via Grand Trunk Ry. (to Buffalo)	10 per cent.
Via Pennsylvania lines	15 per cent.
Via Baltimore & Ohio Ry	15 per cent.

Business destined east of Buffalo, delivered at Buffalo by the following roads

Lake Shore & Michigan Southern Ry.,
Michigan Central Ry.,
New York, Chicago & St. Louis Ry.
Grand Trunk Ry.,

Wabash railroad, route

Via New York Central & Hudson River railroad	30 per cent.
Via West Shore Ry	30 per cent.
Via Delaware, Lackawanna & Western R. R.	20 per cent.
Via Lehigh Valley R. R	20 per cent.

Business via St. Louis to points east thereof (except Chicago), route:

Via Wabash railroad New York business via Wabash R. R. route Erie R. R. Boston business, via Wabash, route via Canadian Pacific R. R., care of Boston & Maine R. R., Newport, Me., Fitchburg delivery	20 per cent.
Via Pennsylvania lines	20 per cent.
Via Baltimore & Ohio Southwestern	25 per cent.

1108 Specific Routings.

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big 4). Connections for New York business *is* (Lake Shore & Michigan Southern and Erie railroads	35 per cent.

It is expected that specific routings (see pages 4 and 5) will give to the Ogden route its full proportion of 10 per cent.

Baltimore shipments route:

Via Baltimore & Ohio, when via Chicago Via Baltimore & Ohio Southwestern, when via St. Louis	66⅔ per cent.
Via Pennsylvania lines	33⅓ per cent.

Boston shipments route:

In care of Boston & Maine Ry. (Fitchburg division) at Rotterdam Jct. Mechanicsville, Shelburne Falls or when routed via Canadian Pacific, at Newport.
When via the Wabash route, care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

Duluth shipments route:

Via Union Pacific railroad, care Great Northern railway at Sioux City.

Fargo, S. D., shipments route:

Via Union Pacific, care Great Northern Ry. at Sioux City.

Fort Dodge, Ia., shipments route:

Via Union Pacific Ry. to Council Bluffs, thence via Illinois Central railroad.

Grand Forks, N. D., shipments route:

Via Union Pacific Ry. care Great Northern railway at Sioux City.

New York shipments route:

Via Erie railroad from Buffalo, N. Y.

Philadelphia shipments route:

	Via Pennsylvania lines	66⅔ per cent.
1109	Via Baltimore & Ohio, when via Chicago	33⅓ per cent.
	Via Baltimore & Ohio Southwestern, when via St. Louis	

Pittsburgh shipments route:

Via Pennsylvania lines.

Sioux City shipments route:

Via Union Pacific railway.

Wichita shipments route:

Via Chicago, Rock Island & Pacific R. R. from Ft. Worth.

Winnipeg shipments route:

Via the Union Pacific R. R., care Great Northern Ry. from Sioux City.

Phone G. B. O. 12/7 2 p. m.

Dostination.	Preferred delivery.	When shipped by—
Milwaukee, Wis.	Chicago, Milwaukee & St. Paul Ry.	Fay Fruit Co.
"	... Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Minneapolis, Minn.	Chicago, Milwaukee & St. Paul Ry.	So. Cal. Fruit Exchange.
"	... Chicago, Milwaukee & St. Paul Ry.	Covina O. G. Ass'n.
"	... C. St. P. M. & O. R. R.....	Fay Fruit Co.
"	... C. St. P. M. & O. R. R. or C. M. & St. P.	Porter Brothers Co.
"	... Minneapolis & St. Louis Ry.	Ruddock, Trench & Co.
"	... Minneapolis & St. Louis Ry.	Covina O. G. Ass'n.
New York city.	Erie railway..... ..	So. Cal. Fruit Exchange.
"	... Erie railway.....	Covina O. G. Ass'n.
"	... Erie railway.....	Fay Fruit Co.
"	... Erie railway.....	Ruddock, Trench & Co.
"	... Erie railway.....	Porter Brothers Co.
"	... Erie railway.....	Earl Fruit Co.
"	... Erie railway.....	Redlands O. G. Ass'n.
"	... Erie railway.....	I. L. Lyon & Sons.
"	... Baltimore & Ohio.....	A. Gregory.
"	... Baltimore & Ohio Ry.....	West-American Fruit Co.
1128		
Omaha, Neb..	Union Pacific railway.....	Fay Fruit Co.
"	... Union Pacific railway.....	So. Cal. Fruit Exchange.
"	... Burlington route..	Redlands O. G. Ass'n.
"	... Burlington route.....	I. L. Lyon & Sons.
Oshkosh, Wis..	Chicago & Northwestern Ry.	I. L. Lyons & Sons.
Philadelphia, Pa.	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange.
"	... Baltimore & Ohio R. R....	Covina O. G. Ass'n.
"	... Pennsylvania lines.....	Fay Fruit Co.
"	... Lehigh Valley R. R.....	Ruddock, Trench & Co.
"	... Philadelphia & Reading Ry.	Porter Brothers Co.
"	... Philadelphia & Reading Ry.	Earl Fruit Co.
"	... Pennsylvania lines.....	I. L. Lyon & Sons.

Destination.	Preferred delivery.	When shipped by—
Pittsburgh, Pa.	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange.
"	... Pennsylvania lines.....	Earl Fruit Co.
"	... Pennsylvania lines..... ..	Fay Fruit Co.
"	... Pennsylvania lines.....	A. Gregory.
"	... Pennsylvania lines.....	Moulton & Greene.
"	... Pennsylvania lines.....	Sandeland Bros.
"	... Pennsylvania lines.....	Spar Fruit Co.
"	... Pennsylvania lines.....	Covina O. G. Ass'n.
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.
"	... Lehigh Valley R. R.....	Earl Fruit Co.
Sioux City, Ia.	Union Pacific railway.....	So. Cal. Fruit Exchange.
Springfield, Mass.	Boston & Albany R. R.....	Earl Fruit Co.
St. Louis, Mo..	St. Louis & San Francisco R. R.	Ruddock, Trench & Co.
St.Paul,Minn.	Chicago, Milwaukee & St. Paul Ry.	So. Cal. Fruit Exchange.
"	... C. St. P. M. & O. R. R.....	Fay Fruit Co.
1129		
St.Paul,Minn.	C. St. P. M. & O. R. R. or C. M. & St. P.	Porter Brothers Co.
Syracuse, N. Y.	New York Central & Hudson R. R. R.	Ruddock, Trench & Co.
Utica, N. Y...	Delaware, Lackawanna & Western R. R.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R...	So. Cal. Fruit Exchange
"	... Pennsylvania lines.....	Earl Fruit Co.
Waterloo, Ia..	Chicago Great Western Ry.	So. Cal. Fruit Exchange.
Winona, Minn.	Burlington route.....	West-American Fruit Co.
Worcester, Mass.	Fitchburg.....	West-American Fruit Co.
Winnipeg, Man.	Northern Pac.....	I. L. Lyon & Sons.
Youngstown, O.	Baltimore & Ohio R. R...	I. L. Lyon & Sons.

Preferred Deliveries by Switching Service.

Pages 7 and 8 show shippers' *preferred delivering lines* in various cities. At points shown below, such preferred deliveries may be effected by switching service; therefore, to prevent a line receiving more than its allotment, business may be routed via another line, and desired delivery be given:

Point.	Lines that will perform switching for each other.
Kansas City, Mo.....	St. Louis & San Francisco railway. Missouri, Kansas & Texas railway. Chicago, Rock Island & Pacific railway.
1130 St. Louis, Mo.....	Wabash railroad. St. Louis, Iron Mountain & Southern Ry. St. Louis & San Francisco railway. Missouri, Kansas & Texas railway. Chicago & Alton railway.
Chicago, Ill.....	Chicago, Milwaukee & St. Paul railway. Chicago & Northwestern railway. Illinois Central railroad. Wabash railroad. Chicago, Burlington & Quincy railroad. Chicago, Rock Island & Pacific railway. Chicago Great Western railway. Chicago & Alton railway.
Cincinnati, O..... ...	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis Ry.
Buffalo, N. Y..... 1131	Grand Trunk railway. Lake Shore & Michigan Southern. Michigan Central railway. New York, Chicago & St. Louis railway. (New York Central & Hudson River R. R. perform- all switching service for the three lines last named. Hence those lines have no deliveries in Buffalo, excepting in the New York Central's freight depot or team track; Lines, therefore, performing switching would be the N. Y. C. & H. R. and the Grand Trunk railway.)

NOTE 1.—No line's allotment is to be increased through specific routings, or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 5 and 6), or "Delivering line instructions" (see pages 7 and 8), must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the very best you can, in line with these instructions—which, however, are liable to be changed at any time.

When but few cars are shipped, all may be routed one day via one route; via another route the next day, and so on; but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

1132 Yours truly,

G. W. LUCE.

N. B.—Acknowledge receipt by return mail.
CC to Mr. Wm. Sproule, F. T. M., San Francisco.
Mr. W. G. Neimyer, G. W. A., Chicago, Ill.

(Latter appearing on lines 15 to 19, inclusive, page 905 beginning with "At points above shown below," is inclused in pencil brackets, and across the same is written in pencil "Cancelled."—REPORTER.)

(Across face of matter appearing on page 906 is written in pencil: "Do not route business destined east of Chicago via C. M. & St. P. or C. & N. W. Send via these lines only business for Chicago proper."—REPORTER.)

1133 (7-6-'00—2M.)

2 TG. 90.

Subject:
Southern Pacific Company
(Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent.
Pacific system.
261 South Spring street
(Douglas building)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs., but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc.

In your reply please refer to A-1-16000.

(Confidential.)

NOTE.—This letter *cancels all previous routing and delivering line instructions.*

LOS ANGELES, CAL., Feb. 13, 1901.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 267, effective February 1st, 1901, announcing:

"In guaranteeing the through rate named herein, the ab-
1134 solute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee."

Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit if routing instructions are shown thereon. Agents will therefore not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates change therein.

You will, therefore, commencing February 15th, 1901, please route Trans-continental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railroad.
Texas & Pacific railway.
Southern Pacific Co. (Atlantic system, inc. New Orleans).

The remainder route:

Via El Paso	90 per cent.
Via Ogden	10 per cent.

Business via El Paso route:

Via Texas & Pacific Ry	100 per cent.

1135 Texas & Pacific Ry. business, route:

From Texarkana, Tex., via St. Louis, Iron Mt. & So. Ry. to St. Louis..... 30 per cent.
From Paris, Tex., via St. Louis & San Francisco R. R. to St. Louis..... 30 per cent.
From Ft. Worth, Tex., via Chicago, R. I. & Texas Ry. and Chicago, Rock Island & Pacific Ry. to Kansas City..... 25 per cent.
From Ft. Worth, Tex., via Missouri, Kansas & Texas Ry..... 15 per cent.

Chicago, Rock Island & Pacific Ry. proportion route from Kansas City:

Via Chicago, Milwaukee & St. Paul Ry..... 30 per cent.
Via Chicago Great Western Ry..... 20 per cent.
Via Chicago, Rock Island & Pacific Ry..... 50 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined to Chicago only.)

Missouri, Kansas & Texas Ry. proportion, route:

Via Kansas City..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion via Kansas City, route:

Via Chicago, Milwaukee & St. Paul Ry..... 50 per cent.
Via Chicago Great Western Ry..... 25 per cent.
Via Chicago & Alton Ry..... 25 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined to Chicago only.)

Missouri, Kansas & Texas Ry. proportion via St. Louis, to or via Chicago, route:

Via Wabash railroad..... 70 per cent.
Via Chicago & Alton..... 30 per cent.

1136 St. Louis Iron Mt. & Southern Ry. and St. Louis & San Francisco Ry. via St. Louis to Chicago, route:

Via Wabash Railroad..... 70 per cent.
Via Chicago & Alton..... 30 per cent.

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan Southern Ry. (to Buffalo)..... 20 per cent.
Via Michigan Central Ry. do..... 20 per cent.
Via New York, Chicago & St. Louis Ry. do..... 20 per cent.
Via Grand Trunk railway do..... 10 per cent.
Via Pennsylvania lines..... 15 per cent.
Via Baltimore & Ohio Ry..... 15 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R...	30 per cent.
Via West Shore railway.....	30 per cent.
Via Delaware, Lackawanna & Western R. R.....	20 per cent.
Via Lehigh Valley railroad.....	20 per cent.

Business via St. Louis to points east thereof (except Chicago) route:

Via Wabash railroad.....	20 per cent.
New York business via Wabash R. R route—Erie R. R.....	
Boston business via Wabash R. R. route via Canadian Pacific R. R., care Boston & Maine R. R., Newport, Me., Fitchburg delivery.....	
Via Pennsylvania lines.....	20 per cent.
Via Baltimore & Ohio Southwestern Ry.....	25 per cent.
Via Cleveland, Cincinnati Chicago & St. Louis Ry. (Big Four).....	35 per cent.
Connections for New York business are Lake Shore & Michigan Southern and Erie railroads	

1137 Business via Ogden, route:

It is expected that specific routings (see pages 4 and 5) will give to the Ogden route its full proportion of 10 per cent.

Specific Routings.

Baltimore shipments, route:

Via Baltimore & Ohio R. R. when via Chicago.....	66⅔ per cent.
Via Baltimore & Ohio Southwestern when via St. Louis.....	
Via Pennsylvania lines.....	33⅓ per cent.

Boston shipments, route:

In care of Boston & Maine Ry (Fitchburg division), at Rotterdam Junction, Mechanicsville, Shelburne Falls, or, when, routed via Canadian Pacific, at Newport.

When via the Wabash, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

Cleveland, O., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Cincinnati, O., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Columbus, Ohio, shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)
Duluth shipments, route:
Via Union Pacific railroad, care the Great Northern Ry., at Sioux City.
Fargo, S. D., shipments, route:
Via Union Pacific railroad, care the Great Northern Ry. at Sioux City.
1138 Fort Dodge, Ia., shipments, route:
Via Union Pacific railroad to Council Bluffs, thence via Illinois Central railroad.
Grand Forks, N. D., shipments, route:
Via Union Pacific railroad, care the Great Northern Ry. at Sioux City.
Indianapolis shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Lafayette, Ind., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Louisville shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
New York shipments, route:
Via Erie railroad from Buffalo, N. Y.
Philadelphia shipments, route:

Via Pennsylvania lines	66⅔ per cent.
Via Baltimore & Ohio R. R. when via Chicago	33⅓ per cent.
Via Baltimore & Ohio Southwestern when via St. Louis	33⅓ per cent.

Pittsburgh shipments, route:
Via Pennsylvania lines.
Sioux City shipments, route:
Via Union Pacific railroad.
Wichita shipments, route:
Via Chicago, Rock Island & Pacific Ry., via Ft. Worth.
Winnipeg shipments, route:
Via Union Pacific railroad, care Great Northern Ry. at Sioux City.
On business moving through New Orleans, to points shown below, route as indicated:
1139 Atlanta, Ga., via Louisville & Nashville R. R., Western Ry. of Alabama and Atlanta and West Point R. R.
Asheville, N. C., via Louisville & Nashville, Western railway of Alabama and Southern railway.

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminals is reserved to initial carrier giving guarantee."

1120 Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit if routing instructions are shown thereon.

Agents will therefore not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversion in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

You will, therefore, commencing January 1st, 1901, please route Trans-continental shipments of citrus fruit, originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railway
Texas & Pacific railway.
Southern Pacific Ry. (Atlantic system, inc. New Orleans.)
Houston & Texas Central.

The remainder, route:

Via El Paso	90 per cent.
Via Ogden	10 per cent.

Business via El Paso, route:

Via Texas & Pacific Ry	100 per cent.

Texas & Pacific Ry. business, route:

Via St. Louis, Iron Mt. & Southern Ry. at Texarkana, Tex	25 per cent.
Via St. Louis & San Francisco R. R., at Paris, Tex	25 per cent.
1121 Via Chicago, Rock Island & Texas Ry. at Ft. Worth, Tex	30 per cent.
Via Missouri, Kansas & Texas Ry., at Ft. Worth, Tex	20 per cent.

St. Louis, Iron Mt. & Southern Ry. proportion, route:

Via St. Louis	100 per cent.

St. Louis & San Francisco Ry. proportion, route:

Via St. Louis	100 per cent.

Chicago, Rock Island & Texas Ry. proportion to Kansas City route:

Via Chicago, Rock Island & Pacific Ry.. .... 100 per cent.

Chicago, Rock Island & Pacific Ry. proportion, route from Kansas City:

Via Chicago, Milwaukee & St. Paul Ry..... 35 per cent.
Via Chicago, Rock Island & Pacific Ry..... 65 per cent.

(Give the Chicago, Milwaukee & St. Paul its allotment, as nearly as can be, of business destined Milwaukee and Chicago.)

Missouri, Kansas & Texas Ry. proportion, route:

Via Kansas City.. ..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion, via Kansas City, route:

Via Chicago, Milwaukee & St. Paul Ry..... 60 per cent.
Via Chicago Great Western R. R..... 20 per cent.
Via Chicago & Alton Ry..... 20 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined Milwaukee and Chicago.)

Missouri, Kansas & Texas Ry. proportion, via St. Louis, to or via Chicago, route:

Via Wabash R. R..... 70 per cent.
Via Chicago & Alton..... 30 per cent.

1122 St. Louis, Iron Mt. & Southern Ry. and St. Louis & San Francisco Ry., via St. Louis to Chicago, route:

Via Wabash railroad .... 70 per cent.
Via Chicago & Alton..... 30 per cent.

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan Southern Ry. (to Buffalo)..... 20 per cent.
Via Michigan Central railway (to Buffalo)..... 20 per cent.
Via New York, Chicago & St. Louis Ry. (to Buffalo)..... 20 per cent.
Via Grand Trunk railway. (To Buffalo)..... 10 per cent.
Via Pennsylvania lines..... 15 per cent.
Via Baltimore & Ohio Ry..... 15 per cent.

Business destined east of Buffalo, delivered at Buffalo by the following roads:

Lake Shore & Michigan Southern Ry.
Michigan Central railway.
New York, Chicago & St. Louis Ry.
Grand Trunk railway.
Wabash railroad.

Route:

Via New York Central & Hudson River railroad..... 30 per cent.
Via West Shore railway..... 30 per cent.
Via Delaware, Lackawanna & Western R. R..... 20 per cent.
Via Lehigh Valley R. R..... 20 per cent.

Business via St. Louis to points east thereof (except Chicago), route:

Via Wabash railroad (New York business via Wabash R. R. route Erie R. R. Boston business, via Wabash, route via Canadian Pacific R. R., care of Boston & Main- R. R., Newport, Me., Fitchburg delivery)..... 20 per cent.

1123 Via Pennsylvania lines..... 20 per cent.
Via Baltimore & Ohio Southwestern..... 25 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four); connections for New York business are Lake Shore & Michigan Southern and Erie R. R.'s..... 35 per cent.

Business via Ogden, route:

It is expected that specific routings (see pages 5 and 6), will give to the Ogden route its full proportion of..... 10 per cent.

Specific Routings.

Baltimore shipments, route:

Via Baltimore & Ohio, when via Chicago.....
Via Baltimore & Ohio Southwestern when via St. Louis..... } 66⅔ per cent.
Via Pennsylvania lines..... 33⅓ per cent.

Boston shipments, route:

In care of Boston & Maine Ry. (Fitchburg division), at Ritterdam Junction, Mechanicsville, Shelburne Falls, or when routed via Canadian Pacific, at Newport.
When via the Wabash route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

Cleveland, O. shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Cincinnati shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Columbus, O., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry., (Big Four).
Duluth shipments, route:
Via Union Pacific railroad, care Great Northern Ry. at Sioux
1124 City:
Fargo, S. D., shipments, route:
Via Union Pacific railroad, care Great Northern Ry. at Sioux City.
Fort Dodge, Ia., shipments, route:
Via Union Pacific railroad to Council Bluffs, thence via Illinois Central railroad.
Grand Forks, N. D., shipments, route:
Via Union Pacific railroad, care Great Northern Ry. at Sioux City.
Indianapolis shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry., (Big Four).
Lafayette, Ind., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry., (Big Four).
Louisville shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry., (Big Four).
New York shipments, route:
Via Erie railroad from Buffalo, N. Y.
Philadelphia shipments, route:

Via Pennsylvania lines	66⅔ per cent.
Via Baltimore & Ohio when via Chicago	33⅓ per cent.
Via Baltimore & Ohio Southwestern, when via St. Louis	33⅓ per cent.

Pittsburgh shipments, route:
Via Pennsylvania lines.
Sioux City shipments, route:
Via Union Pacific railroad.
1125 Wichita shipments, route:
Via Chicago, Rock Island & Pacific Ry., via Ft. Worth.
Winnipeg shipments, route:
Via Union Pacific railroad, care Great Northern Ry. from Sioux City.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line, as shown, *must be used.*

Destination.	Preferred delivery.	When shipped by—
Albany, N. Y..	Delaware & Hudson Co...	Earl Fruit Co.
Atlanta, Ga...	Southern railway.....	So. Cal. Fruit Exchange.
Baltimore, Md	Pennsylvania lines.....	Earl Fruit Co.
" ...	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange.
" ...	Baltimore & Ohio R. R....	Fay Fruit Co.
" ...	Baltimore & Ohio R. R....	A. Gregory.
Birmingham, Ala.	Southern railway..... ...	So. Cal. Fruit Exchange.
Buffalo, N. Y.	Lake Shore & Michigan So. Ry.	So. Cal. Fruit Exchange.
" ...	Grand Trunk Ry.....	Fay Fruit Co.
" ...	Lake Shore & Michigan So. Ry.	Ruddock, Trench & Co.
" ...	Lake Shore & Michigan So. Ry.	Covina O. G. Ass'n.
" ...	Lake Shore & Michigan So. Ry.	A. Gregory.
Boston, Mass..	Fitchburg.....	A. Gregory.
" ...	Fitchburg, and Boston & Maine.	Redlands O. G. Ass'n.
" ...	Fitchburg.....	West-Am. Fruit Co.
" ...	Fitchburg.....	I. L. Lyon & Sons.
Canadian points.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.
" ...	Grand Trunk Ry.....	Fay Fruit Co.

1126

Chicago, Ill...	Chicago, Milwaukee & St. Paul Ry. or Chicago & Northwestern Ry.	Earl Fruit Co.
" ...	Chicago, Milwaukee & St. Paul Ry.	Fay Fruit Co.
" ...	Chicago, Milwaukee & St. Paul Ry. Chicago & Northwestern Ry. Illinois Central	Ruddock, Trench & Co.
" ...	Chicago & Northwestern Ry.	Porter Brothers Co.

Destination.	Preferred delivery.	When shipped by—
Cincinnati, O.	Baltimore & Ohio S. W. Ry.	So. Cal. Fruit Exchange
"	... C. C. C. & St. L. (Big Four)	Fay Fruit Co.
"	... Pennsylvania lines	Earl Fruit Co.
"	... Pennsylvania lines	Ruddock, Trench & Co., to Hammer & Co.
"	... Baltimore & Ohio Ry.....	A. Gregory.
Columbus, O..	Pennsylvania lines	Fay Fruit Co.
"	... Baltimore & Ohio S. W. Ry.	So. Cal. Fruit Exchange.
"	... Pan Handle	I. L. Lyon & Sons.
Cleveland, O..	Nickel Plate.....	A. Gregory.
"	... Nickel Plate.....	West-Am. Fruit Co.
"	... Nickel Plate.....	I. L. Lyon & Sons.
Denver, Colo..	Union Pacific railroad.....	Fay Fruit Co.
"	... Denver & Rio Grande Ry..	Redlands O. G. Ass'n.
Des Moines, Ia.	Chicago Great Western Ry.	So. Cal. Fruit Exchange.
"	... Chicago Great Western Ry.	Ruddock, Trench & Co.
"	... Chicago Great Western Ry.	Covina O. G. Ass'n, to Davidson Bros. Co.
Detroit, Mich.	Michigan Central Ry., or Lake Shore & Michigan Southern Ry.	So. Cal. Fruit Exchange.
"	... Grand Trunk Ry.....	Fay Fruit Co.
"	... Baltimore & Ohio Ry.....	Ruddock, Trench & Co.
"	... Michigan Central Ry.....	I. L. Lyon & Sons.
"	... Michigan Central Ry.....	West-American Fruit Co.

1127

Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Michigan So. Ry.	A. Gregory.
Galesburg, Ill.	Burlington route	I. L. Lyon & Sons.
Indianapolis, Ind.	Big Four (C. C. C. & St. L.)	So. Cal. Fruit Exchange.
"	... Vandalia line	So. Cal. Fruit Exchange.
Keene, N. H..	Boston & Maine	West-American Fruit Co.
Kalamazoo, Mich.	Michigan Central Ry.....	West-American Fruit Co.
Lima, O.....	Lake Erie & Western Ry..	Covina O. G. Ass'n.
"	... Erie railway	Altschul Bros. & Co.
Louisville, Ky.	Baltimore & Ohio S. W. Ry.	So. Cal. Fruit Exchange.

1146 When but few cars are shipped, all may be routed one day via one route; via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly, G. W. LUCE.

N. B.—Acknowledge receipt by return mail.

(C. C. to Mr. Wm. Sproule, F. T. M., San Francisco.
Mr. W. G. Neimyer, G. W. A., Chicago.)

1147 (7-6-'00-2M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gent. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs., but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc.

In your reply, please refer to A-1-16000

(Confidential.)

This letter cancels previous letter of October 30, 1900.

LOS ANGELES, CAL., Feb. 16, 1901.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing Citrus Fruit Shipments.

GENTLEMEN: Commencing February 20th, 1901, you will please route all shipments of citrus fruit, destined to territory named below, as follows:

Montana business, route via Ogden.

1148 Colorado common points, route:

Via Union Pacific railroad ..... 40 per cent.
Via Rio Grande Western railway..... 60 per cent.

Rio Grande Railway proportion, route:

Via Colorado Midland railway..... ..... 50 per cent.
Via Denver & Rio Grande railway..... 50 per cent.

Salt Lake City (Utah) business, route:

Via Rio Grande Western railway..... 100 per cent.

Yours truly,

G. W. LUCE.

CC to Mr. Wm. Sproule.

1149 (2-17-'00 2M.)

2 TG 90.

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Interstate rates are subject to provisions of interstate commerce law.

Unless otherwise agreed, all local rates are subject to change without further notice.

Most of this company's freight cars are built to carry twenty to thirty tons weight. Never load less than 12 tons. If shippers load to weight capacity, which is plainly marked on sides of car, it will do much to obviate delay in furnishing cars for loading and prevent detention in transit. Do not load to exceed weight capacity.)

Mc

In your reply, please refer to A-1-16000.

(Confidential.)

NOTE.—*This letter cancels all previous routing and delivering line instructions.*

LOS ANGELES, CAL., March 11, 1901.

Mr. Chas. Seyler, agent, S. P. Co., Los Angeles, Cal.
Mr. D. A. Bruce, agent, S. P. Co., Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Transcontinental Freight Bureau eastbound special tariff No. S. R. 267, effective February 1st, 1901, an-

nouncing: 'In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee.'

1150 Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit if routing instructions are shown thereon. Agents will therefore not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates change therein.

You will, therefore, commencing today (March 11, 1901), please route Trans-continental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system
Union Pacific railroad
Rio Grande Western railway
Texas & Pacific railway
Southern Pacific Co. (Atlantic system, inc. New Orleans.)

The remainder route:

Via Ogden	90 per cent.
Via El Paso	10 per cent.

Business via Ogden, route:

Via Rio Grande Western railway	70 per cent.
Via Union Pacific system	30 per cent.

Rio Grande Western Ry. proportion, route: (Excepting Chicago business, routing for which see note below):

1151	Via Denver & Rio Grande R. R., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.	70 per cent.
	Via Colorado Midland railway, and Chicago, Rock Island and Pacific railway	30 per cent.

NOTE.—Chicago business route from Missouri river:

Via Chicago & Northwestern railway	80 per cent.
Via Chicago, Milwaukee & St. Paul railway	20 per cent.

Union Pacific System business, route:

Via Illinois Central railroad	60 per cent.
Via Chicago & Northwestern railway	40 per cent.

NOTE.—For the present do not sent any Chicago business via Union Pacific R. R., except when following 'Specific routing' instructions (see pages 4 and 5).

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan Southern Ry. (to Buffalo) ..... 20 per cent.
Via Michigan Central railway (to Buffalo)..... 20 per cent.
Via New York, Chicago & St. Louis railway (to Buffalo) ..... 20 per cent.
Via Grand Trunk railway (to Buffalo) ..... 10 per cent.
Via Pennsylvania lines ..... 15 per cent.
Via Baltimore & Ohio railroad..... 15 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River railroad ..... 30 per cent.
Via West Shore railway..... 30 per cent.
Via Delaware, Lackawanna & Western railroad.. 20 per cent.
Via Lehigh Valley railroad ..... 20 per cent.

Business via El Paso, route:

It is expected that specific routings (see pages 4 and 5) will give to the El Paso route its full proportion of 10 per cent.

1152

Specific Routings.

Baltimore shipments, route:

Via Baltimore & Ohio railroad, when via Chicago.....
Via Pennsylvania lines ..... 66⅔ per cent.
Boston shipments, route: ..... 33⅓ per cent.

In care of Boston & Maine Ry. (Fitchburg division), at Rotterdam Junction, Mechanicsville, Shelburne Falls or, when routed via Canadian Pacific Ry., at Newport.

When via the Wabash railroad, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

Cincinnati, O., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four.)

Columbus, O., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four.)

Duluth shipments, route:

Via Union Pacific railroad, care the Great Northern Ry. at Sioux City.

Fargo, S. D., shipments, route:

Via Union Pacific railroad, care the Great Northern Ry. at Sioux City.

Fort Dodge, Ia., shipments, route:

Via Union Pacific railroad to Council Bluffs, thence via Illinois Central railroad.

Grand Forks, N. D., shipments, route:
Via Union Pacific railroad, care the Great Northern Ry. at Sioux City.
Indianapolis shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four.)

1153 Specific Routings.

Louisville, Ky., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four.)
Lafayette, Ind., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four.)
New York shipments, route:
Via Erie railroad from Buffalo, N. Y.
Philadelphia shipments, route:
Via Pennsylvania lines ..... 66⅔ per cent.
Via Baltimore & Ohio railroad when via Chicago ..... 33⅓ per cent.
Pittsburgh shipments, route:
Via Pennsylvania lines.
Sioux City shipments, route:
Via Union Pacific railroad.
Wichita shipments, route:
Via Chicago, Rock Island & Pacific Ry., via Ft. Worth.
Winnipeg shipments, route:
Via Union Pacific railroad, care Great Northern railway at Sioux City.

On business moving through New Orleans, to points shown below, routing as indicated must be observed:

Atlanta, Ga.:—Via Louisville & Nashville R. R., Western Ry. of Alabama, and Atlantic & West Point R. R.
Asheville, N. C.:—Via Louisville & Nashville R. R., Western Railway of Alabama and Southern railway.
Birmingham, Ala.: Via New Orleans & Northeastern Ry. and Alabama Great Southern railway.
Charleston, S. C.: Via Louisville & Nashville R. R., Georgia railroad, and Southern railway.
Jacksonville, Fla.: Via Louisville & Nashville R. R., and Plant system.
Macon, Ga.: Via Louisville & Nashville R. R., Western Rail-
1154 way of Alabama and Central of Georgia railway.
Mobile, Ala.: Via Louisville & Nashville railroad.
Montgomery, Ala.: Via Louisville & Nashville railroad.
Savannah, Ga.: Via Louisville & Nashville R. R., and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line, as shown, *must be used.*

Destination.	Preferred delivery.	When shipped by—
Albany, N. Y.	Delaware & Hudson Co...	Earl Fruit Co.
Anderson, Ind., for Moulton & Riedel	C. C. C. & St. L. Ry. (Big Four.)	So. Cal. Fruit Exchange.
Atlanta, Ga...	Southern railway.....	So. Cal. Fruit Exchange.
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
"	... Baltimore & Ohio R. R...	So. Cal. Fruit Exchange.
"	... Do.	... Fay Fruit Co.
"	... Do.	... A. Gregory.
Birmingham, Ala.	Southern railway, P F C. F	So. Cal. Fruit Exchange.
Boston, Mass.,	Fitchburg railway.....	A. Gregory.
"	Do.	..... West-Am. Fruit Co.
" See letter.	Do.	..... I. L. Lyon & Sons.
"	Do.	..... So. Cal. Fruit Exchange.
"	Fitchburg & Main-.	Boston & Redlands O G Ass'n.
Buffalo, N. Y. 1155	Lake Shore & Michigan So. Ry.	So. Cal. Fruit Exchange.
Canadian points.	Grand Trunk railway.....	So. Cal. Fruit Exchange.
"	... Do.	..... Fay Fruit Co.
(Also see Canadian points specifically mentioned herein alphabetically.)		
Chattanooga, Tenn.	Southern railway.....	So. Cal. Fruit Exchange
Chicago, Ill...	Chicago, Mil. & St. Paul Ry. or Chicago & Northwestern Ry.....	Earl Fruit Co.
"	... Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
"	... Do.	Fay Fruit Co.
"	Chicago, Mil. & St. Paul Ry. or Chicago & Northwestern Ry.	Ruddock, Trench & Co.
"	... Chicago & Northwestern Ry.	Porter Bros. Co.

Destination.	Preferred delivery.	When shipped by—
Cincinnati, O.	Pennsylvania railroad.....	So. Cal Fruit Exchan
" ...	C. C. C. & St. L. Ry. (Big Four)	Fay Fruit Co.
" ...	Pennsylvania railroad.....	Earl Fruit Co.
" (To Hammer & Co.)	Do.	Ruddock, Trench & Co
" ...	Baltimore & Ohio railroad	A. Gregory.
Columbus, O.	Pennsylvania lines.....	A. Gregory.
" ...	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchan
" ...	Pan Handle.....	I. L. Lyon & Sons.
Cleveland, O.	Nickel Plate.....	A. Gregory.
" ...	Do.	I. L. Lyon & Sons.
1156		
Cleveland, O.	Nickel Plate.....	West-Am. Fruit Co.
" ...	Do.	So. Cal. Fruit Exchang
Denver, Colo.	Union Pacific railroad.....	Fay Fruit Co.
" ...	Do.	Redlands O. G. Ass'n.
" ...	Do.	A. Gregory.
" ...	Do.	Redlands Eclipse O. Ass
Des Moines, Ia.	Chicago, Great Western Ry.	So. Cal. Fruit Exchang
" ...	Do. ...	Ruddock, Trench & Co.
" (for Davidson Bros. Co.)	Do. ...	Covina O. G. Assn.
" (C. C. Taft & Co.)	Chicago, R. I. & Pacific Ry.	Ruddock, Trench & Co.
" (Todd & Craft.)		
Detroit, Mich.	Lake Shore & Mich. So. Ry.	So. Cal. Fruit Exchange
" ...	Grand Trunk railway.....	Fay Fruit Co.
" ...	Michigan Central Ry.....	I. L. Lyon & Sons.
" ...	Michigan Central Ry.....	West-Am. Fruit Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Mich. So. Ry.	A. Gregory.
Galesburg, Ill.	Burlington route.....	I. L. Lyon & Sons.
" ...	Do.	So. Cal. Fruit Exchange.
Grand Island, Neb.	Burlington route.....	So. Cal. Fruit Exchange.

1157

Destination.	Preferred delivery.	When shipped by—
Hamilton, O. (for Jno. Amicon Bros.)	Pan Handle	Fay Fruit Co.
"	Do.	Ruddock, Trench & Co.
"	Do.	Earl Fruit Co.
"	Do.	A. Gregory.
K.Cy	Seelet- ter	C. K. Short.
Indianapolis, Ind.	C. C. C. & St. L (Big Four)..	So. Cal. Fruit Exchange.
Jackson, Mich.	Michigan Central railway.	So. Cal. Fruit Exchange.
Keene, N. H.	Boston & Maine R. R.	West-Am. Fruit Co.
Kalamazoo, Mich.	Michigan Central railway.	West-Am. Fruit Co.
Lafayette, Ind. (for Pottlitzer Bros.)	C. C. C. & St. L. (Big Four)..	So. Cal. Fruit Exchange.
La Salle, Ind.	Burlington route	So. Cal. Fruit Exchange.
Lima, O	Lake Erie & Western Ry..	Covina O. G. Ass'n.
"	Erie railroad	Altschul Bros. & Co.
Lincoln, Neb.	Burlington route or (Chicago, R. I. & Pacific Ry.).	So. Cal. Fruit Exchange.
Louisville, Ky.	Baltimore & Ohio S. W. Ry.	So. Cal. Fruit Exchange.
Milwaukee, Wis.	Chicago, Mil. & St. P. Ry..	Fay Fruit Co.
"	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Minneapolis, Minn.	Chicago, Mil. & St. P. Ry..	So. Cal. Fruit Exchange.
"	Do.	Covina O. G. Ass'n.
"	Do.	or
"	C. St. P. M. & O. R. R.	Porter Bros. Co.
"	C. St. P. M. & O. R. R.	Fay Fruit Co.

1158

Montreal, Que.	Grand Trunk railway	So. Cal. Fruit Exchange.

Birmingham, Ala., via New Orleans & North-eastern Ry. and Alabama Great Southern railroad.
Charleston, S. C., via Louisville & Nashville, Georgia railroad, and Southern railway.
Jacksonville, Fla., via Louisville & Nashville R. R. and Plant system.
Macon, Ga., route via Louisville & Nashville, Western Railway of Alabama and Central of Georgia Ry.
Mobile, Ala., route via Louisville & Nashville railroad.
Montgomery, Ala., route via Louisville & Nashville railroad.
Savannah, Ga., route via Louisville & Nashville R. R. and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line, as shown, *must be used.*

Destination.	Preferred delivery.	When shipped by—
Albany, N. Y.	Delaware & Hudson Co...	Earl Fruit Co.
Anderson, Ind., for Moulton & Riedel	C. C. C. & St. L. (Big Four).	So. Cal. Fruit Exchange.
Atlanta, Ga...	Southern railway...	So. Cal. Fruit Exchange.
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
"	... Baltimore & Ohio R. R...	So. Cal. Fruit Exchange.
"	... Baltimore & Ohio R. R...	Fay Fruit Co.
"	... Baltimore & Ohio R. R...	A. Gregory.
1140		
Birmingham, Ala.	Southern railway.....	So. Cal. Fruit Exchange.
Boston, Mass..	Fitchburg.....	A. Gregory.
"	... Fitchburg and Boston and Maine.	Redlands O. G. Ass'n.
"	... Fitchburg.....	West-Am. Fruit Co.
"	... Fitchburg.....	I. L. Lyon & Sons.
"	... Fitchburg.....	So. Cal. Fruit Exchange.
Canadian Points.	Grand Trunk railway.....	So. Cal. Fruit Exchange.
"	... Grand Trunk railway.....	Fay Fruit Co.
Chattanooga, Tenn.	Southern railway.....	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
Chicago, Ill...	Chicago, Mil. & St. Paul Ry. or Chicago & Northwestern Ry.	Earl Fruit Co.
"	... Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
"	... Chicago, Mil. & St. Paul Ry.	Fay Fruit Co.
"	... Chicago, Mil. & St. Paul Ry.	Ruddock, Trench & Co.
"	... Chicago & Northwestern Ry.	
"	... Illinois Central..... ...	
"	... Chicago & Northwestern...	Porter Bros. Co.
Cincinnati, O..	See letter next.	
"	... C. C. C. & St. L. (Big Four).	Fay Fruit Co.
"	... Pennsylvania lines.....	Earl Fruit Co.
" (to Hammer & Co.)	Pennsylvania lines.....	Ruddock, Trench & Co.
"	... Baltimore & Ohio R. R ...	A. Gregory.
Columbus, O..	Pennsylvania lines.....	A. Gregory.
"	... Baltimore & Ohio S. W. Ry.	So. Cal. Fruit Exchange.
"	... Pan Handle.....	I. L. Lyon & Sons.
Cleveland, O..	Nickel Plate.....	A. Gregory.
"	... Nickel Plate.....	West-American Fr. Co.
"	... Nickel Plate.....	I. L. Lyon & Sons.
"	... Nickel Plate.....	So. Cal. Fruit Exchange.
Denver, Colo..	Union Pacific railroad.....	Fay Fruit Co.
"	... Union Pacific railroad.....	Redlands O. G. Ass'n.
"	... Union Pacific railroad.....	A. Gregory.
"	... Union Pacific railroad.....	Redlands Eclipse O. Ass'n.
1141		
Des Moines, Ia.	Chicago Great Western Ry.	So. Cal. Fruit Exchange.
"	... Chicago Great Western Ry.	Ruddock, Trench & Co.
"		
To David-son Bros. Co.)	Chicago Great Western Ry.	Covina O. G. Ass'n.
"(To C.C. Taft & Co.)	Chicago, Rock Island & P. Ry.	Ruddock, Trench & Co.
"(Todd & Craft)		
etroit, Mich.	Letter 1/15	So. Cal. Fruit Exchange.
"	... Grand Trunk Ry.....	Fay Fruit Co.
"	... .	Ruddock, Trench & Co.
"	... Michigan Central Ry.....	I. L. Lyon & Sons.
"	... Michigan Central Ry.....	West-American Fr. Co.

Destination.	Preferred delivery.	When shipped by—
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Mich Southern Ry.	A. Gregory.
Galesburg, Ill.	Burlington route.....	I. L. Lyon & Sons.
" ...	Burlington route.....	So. Cal. Fruit Exchange.
Grand Island, Neb.	Burlington route.....	So. Cal. Fruit Exchange.
Hamilton, O. (for John Amicon Bros.)	Pan Handle.....	Fay Fruit Co. Ruddock, Trench & Co. Earl Fruit Co. A. Gregory. C. K. Short.
Indianapolis, Ind.	C. C. C. & St. L. (Big Four)	So. Cal. Fruit Exchange.
Jackson, Mich.	Michigan Central Ry.....	So. Cal. Fruit Exchange.
Keene, N. H.	Boston & Maine.....	West-American Fr. Co.
Kalamazoo, Mick.	Michigan Central Ry.....	West-American Fr. Co.
La Fayette, Ind. (for Pottlitzer Bros.)	C. C. C. & St. L. (Big Four)	So. Cal. Fruit Exchange.
La Salle, Ill...	Burlington route.....	So. Cal. Fruit Exchange.
Lima, O.....	Lake Erie & Western Ry..	Covina O. G. Ass'n.
"	Erie railroad.....	Altschul Bros. & Co.
Lincoln, Neb.	Burlington route or Chicago, R. I. & P. Ry.	So. Cal. Fruit Exchange.

1142

Louisville, Ky.	Baltimore & Ohio S. W. Ry.	So. Cal. Fruit Exchange.
Milwaukee, Wis.	Chicago, Milwaukee & St. P. Ry.	Fay Fruit Co.
" ...	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Minneapolis, Minn.	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
" ...	Chicago, Mil. & St. Paul Ry.	Covina O. G. Ass'n.
" ...	C. M. St. P. M. & O. R. R..	Fay Fruit Co.
" ...	C. St. P. M. & O. R. R. or Chicago, Milwaukee & St. P. Ry.	Porter Bros. Co.
Montreal, Que.	Grand Trunk railway.....	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
New York city.	Erie railway	So. Cal. Fruit Exchange.
"	... Erie railway	Covina O. G. Ass'n.
"	... Erie railway	Fay Fruit Co.
"	... Erie railway	Porter Bros. Co.
"	... Erie railway	Ruddock, Trench & Co.
"	... Erie railway	Earl Fruit Co.
"	... Erie railway	Redlands O. G. Ass'n.
"	... Erie railway	I. L. Lyon & Sons.
"	... Baltimore & Ohio R. R.	A. Gregory.
Omaha, Neb.	Union Pacific railroad	West-American Fr. Co.
"	... Union Pacific railroad	So. Cal. Fruit Exchange.
"	... Union Pacific railroad	Fay Fruit Co.
"	... Burlington route	Redlands O. G. Ass'n.
Oshkosh, Wis.	Chicago Northwestern Ry.	I. L. Lyon & Sons.
Ottawa, Ont.	Canada Atlantic	Ruddock, Trench & Co.
Peoria, Ill.	Burlington route	So. Cal. Fruit Exchange.
Philadelphia, Pa.	Baltimore & Ohio R. R.	So. Cal. Fruit Exchange.
"	... Baltimore & Ohio R. R.	Covina O. G. Ass'n.
"	... Baltimore & Ohio R. R.	Sandilands Bros.
"	... Pennsylvania lines	Fay Fruit Co.
"	... Pennsylvania lines	I. L. Lyon & Sons.

1143

Philadelphia, Pa.	Lehigh Valley R. R	Ruddock, Trench & Co.
"	... Philadelphia & Reading Ry.	Porter Bros. Co.
"	... Philadelphia & Reading Ry.	Earl Fruit Co.
"	... Philadelphia & Reading Ry.	Redlands Eclipse O. Ass'n.
Pittsburg, Pa.	Baltimore & Ohio R. R	So. Cal. Fruit Exchange.
"	... Pennsylvania lines	Earl Fruit Co.
"	... Pennsylvania lines	Fay Fruit Co.
"	... Pennsylvania lines	Ruddock, Trench & Co.
"	... Pennsylvania lines	A. Gregory.
"	... Pennsylvania lines	Moulton & Greene.
"	... Pennsylvania lines	Sandilands Bros.
"	... Pennsylvania lines	Sparr Fruit Co.
"	... Pennsylvania lines	Covina O. G. Ass'n.
Rochester, N. Y.	West Shore Ry	Salisbury Fruit Co.
"	... Lehigh Valley R. R	Fay Fruit Co.
		Earl Fruit Co.

Destination.	Preferred delivery.	When shipped by—
Scranton, Pa..	Delaware, Lackawanna & W. Ry.	So. Cal. Fruit Exchange.
Sioux City, Ia.	Union Pacific railroad.. ...	So. Cal. Fruit Exchange.
Springfield, Mass.	Boston & Albany R. R.....	Earl Fruit Co.
" (To H. J. Perkins.)	Boston & Albany R. R.....	Walter S. Newhall.
Springfield, Mass.	N. Y. N. H. & H. R. R.....	San Antonio Fr. Ex.
St. Louis, Mo..	St. Louis & San Francisco R. R.	Ruddock, Trench & Co.
" ...	St. Louis, I. Mt. & Southern Ry.	So. Cal. Fruit Exchange.
St. Paul, Minn.	Chicago. Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
" ...	C. St. P. M. & O. R. R. or C M & St P.	Porter Bros. Co.
" ...	C. St. P. M. & O. R. R.....	Fay Fruit Co.
Syracuse, N. Y.	New York Central & H. R. R.	Ruddock, Trench & Co.
Toledo, O	Lake Shore & Mich. So. Ry.	So. Cal. Fruit Exchange.
1144		
Utica, N. Y...	Delaware, Lackawanna & West'n.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange.
" ...	Pennsylvania lines	Earl Fruit Co.
Waterloo, Ia..	Chicago Great Western Ry.	So. Cal. Fruit Exchange.
Wheeling, W. Va.	Baltimore & Ohio R. R ...	So. Cal. Fruit Exchange.
Winona, Minn.	Burlington route.....	West-American Fr. Co.
Worcester, Mass.	Fitchburg.....	West-American Fr. Co.
Winnipeg, Man.	Northern Pacific Ry	I. L. Lyon & Sons.
Youngstown, O.	Baltimore & Ohio R. R ...	I. L. Lyon & Sons.

Preferred Deliveries by Switching Service.

Pages 7, 8, 9, and 10 show shippers' preferred delivering lines in various cities. At points shown below such preferred deliveries may be effected by switching service; therefore, to prevent a line receiving more than its allottment, business may be routed via another line and desired *delivery* be given.

Point.	Lines that will perform switching for each other.
Kansas City, Mo	St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago, Rock Island & Pacific railway.
St. Louis, Mo	Wabash railroad. St. Louis, Iron Mountain & Southern railway. St. Louis & San Francisco Railraod. Missouri, Kansas & Texas railway. Chicago & Alton railway.
1145 Cincinnati, O.....	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis railway.
Buffalo, N. Y	Grand Trunk railway Lake Shore & Michigan Southern railway. Michigan Central railway. New York, Chicago & St. Louis railway. (New York Central & Hudson River R. R. perform all switching service for the three lines last named. Hence those lines have no deliveries in Buffalo, excepting in the New York Central's freight depot or team track. Lines therefore performing switching would be the N. Y. C. & H. R. R. R. and the Grand Trunk Ry.)

NOTE 1.—No line's allottment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 4, 5, and 6,) or "Delivering line instructions" (see pages 7, 8, 9, and 10), must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allottment.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis as the cars move daily to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the best you can, in line with these instructions—which however are liable to be changed at any time.

From Ft. Worth, Tex., via Chicago, R. I. & Texas Ry. and Chicago, Rock Island & Pac. Ry. to Kansas City..... 25 per cent.
From Ft. Worth, Tex., via Missour-, Kansas & Texas Ry..... 15 per cent.

Chicago, Rock Island & Pacific Ry. proportion, route from Kansas City:

1168 Via Chicago, Milwaukee & St. Paul Ry. (see note below)..... 50 per cent.
Via Chicago, Great Western..... 20 per cent.
Via Chicago, Rock Island & Pacific Ry..... 30 per cent.

NOTE.—Route all Chicago business forwarded via the Chicago, Rock Island & Texas Ry. from Ft. Worth via the Chicago, Milwaukee & St. Paul Ry. at Kansas City, also enough other business to make up the latter's allotment as above.

Missouri, Kansas & Texas Ry. proportion, route:

Via Kansas City..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion, via Kansas City, route:

Via Chicago, Milwaukee & St. Paul railway..... 50 per cent.
Via Chicago Great Western railway..... 25 per cent.
Via Chicago & Alton railway..... 25 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined to Chicago only.)

St. Louis, Iron Mt. & Southern Ry., St. Louis & San Francisco, and Missouri, Kansas & Texas Ry. proportion, via St. Louis to Chicago, route:

Via Wabash railroad..... 70 per cent.
Via Chicago & Alton railroad..... 30 per cent.

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan So. Ry. (to Buffalo).. 10 per cent.
Via Michigan Central railway (do.)..... 20 per cent.
Via New York, Chicago & St. Louis Ry. (do.)... 20 per cent.
Via Grand Trunk railway (do.)..... 20 per cent.
Via Pennsylvania lines..... 15 per cent.
Via Baltimore & Ohio railway..... 15 per cent.

1169 Business destined east of Buffalo, route from Chicago:

Via New York Central & Hudson River R. R... 30 per cent.
Via West Shore railway..... 30 per cent.
Via Delaware, Lackawanna & Western R. R... 20 per cent.
Via Lehigh Valley R. R..... 20 per cent.

Business via St. Louis to points east thereof (except Chicago), route:

Via Wabash railroad	20 per cent.
(New York business via Wabash R. R. route Erie R. R. Boston business via Wabash route via Canadian Pacific R. R., care Boston & Maine R. R., Newport, Me., Fitchburg delivery).	
Via Pennsylvania lines	20 per cent.
Via Baltimore & Ohio Southwestern R. R.	25 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)—Connections for New York business are Lake Shore & Michigan Southern and Erie railroads	35 per cent.

Special.

The Southern California Fruit Exchange are sending messengers with their cars, which are sent out as near as can be each day in one train.

It is desired that the train of March 30th be routed via the Union Pacific, the next train via the Rio Grande Western and the next via the Texas & Pacific; and then in rotation, as shown, commencing again with the Union Pacific.

Trains via Union Pacific distribute at Missouri river by giving Chicago business to the Chicago, Milwaukee & St. Paul Ry., the balance to the Illinois Central railroad.

1170 Trains via Rio Grande Western, give the Colorado Midland first train, and thereafter a train every third day.

Trains via Texas & Pacific keep intact to Kansas City, following percentage allotment as near as possible.

Montana business route via Ogden.

Colorado common points, route:

Via Union Pacific railroad	50 per cent.
Via Rio Grande Western railway	50 per cent.

Rio Grande Western Ry. proportion, route:

Via Colorado Midland railway	50 per cent.
Via Denver & Rio Grande railway	50 per cent.

Salt Lake City (Utah) business, route:

Via Rio Grande Western railway	100 per cent.

Specific Routings.

Atlanta, Ga., shipments, route:

Care, the Nashville, Chattanooga & St. Louis Ry. at Memphis.

Baltimore shipments, route:

Via Baltimore & Ohio railroad, when via Chicago ..... 66⅔ per cent.
Via Pennsylvania lines..... 33⅓ per cent.

Boston shipments, route:

In care of Boston & Maine Ry. (Fitchburg division,) at Rotterdam Junction, Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry., at Newport. When via the Wabash railroad, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

Cincinnati, O., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

1171 Columbus, O., shipments, route:

Via Cleveland, Cincinnati, & Chicago & St. Louis Ry. (Big Four).

Duluth shipments, route:

Via the Union Pacific R. R., care the Great Northern Ry. at Sioux City.

Fargo, S. D., shipments, route:

Via the Union Pacific R. R., care the Great Northern Ry. at Sioux City.

Fort Dodge, Ia., shipments, route:

Via Union Pacific R. R. to Council Bluffs, thence via the Illinois Central railroad.

Grand Forks, N. D., shipments, route:

Via the Union Pacific R. R., care the Great Northern Ry. at Sioux City.

Indianapolis, Ind., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Lafayette, Ind., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Louisville, Ky., shipments, route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Nashville, Tenn., shipments, route:

Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.

New York shipments, route:

Via the Erie railroad from Buffalo, N. Y.

Philadelphia shipments, route:

Via the Pennsylvania lines..... ..... 66⅔ per cent.
Via the Baltimore & Ohio railroad when via Chicago..... ..... 33⅓ per cent.

Pittsburgh shipments, route:
Via the Pennsylvania lines.

1172 Sioux City, Ia., shipments, route:
Via the Union Pacific railroad.

Wichita, Kan., shipments, route:
Via Chicago, Rock Island & Pacific Ry., at Ft. Worth, Tex.

Winnipeg shipments, route:
Via the Union Pacific railroad, care the Great Northern Ry. at Sioux City.

On business moving through New Orleans, to points shown below, routing as indicated must be observed:

Atlanta, Ga.:—Via Louisville & Nashville R. R., Western Ry. of Alabama, and Atlanta & West Point R. R.

Asheville, N. C.:—Via Louisville & Nashville R. R., Western Ry. of Alabama and Southern railway.

Birmingham, Ala.:—Via New Orleans & Northeastern Ry. and Alabama Great Southern railway.

Charleston, S. C.:—Via Louisville & Nashville R. R., Georgia railroad and Southern railway.

Jacksonville, Fla.:—Via Louisville & Nashville R. R. and Plant system.

Macon, Ga.:—Via Louisville & Nashville R. R., Western Railway of Alabama and Central of Georgia railway.

Mobile, Ala.:—Via Louisville & Nashville R. R.

Montgomery, Ala.:—Via Louisville & Nashville railroad.

Savannah, Ga.:—Via Louisville & Nashville R. R. and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line or lines, as shown, must be used:

1173

Destination.	Preferred delivery.	When shipped by—
Aberdeen, S. D.	Chicago, Milwaukee & St. P. Ry.	Porter Bros. Company.
Albany, N. Y.	Delaware & Hudson Co...	Earl Fruit Co.
Anderson, Ind., for Moulton & Ridel.	C. C. C. & St. L. Ry. (Big Four)	So. Cal. Fruit Exchange

Destination.	Preferred delivery.	When shipped by—
Atlanta, Ga...	Southern railway.....	So. Cal. Fruit Exchange
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
" ...	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange
" ...	Do. ...	Fay Fruit Co.
" ...	Do. ...	A. Gregory.
Birmingham, Ala.	Southern railway.....	So. Cal. Fruit Exchange
Boston, Mass..	Fitchburg railway.....	A. Gregory.
" ...	Do.	West. Am. Fruit Co.
" ...	Do.	I. L. Lyon & Sons.
" ...	Do.	So. Cal. Fruit Exchange
" ...	Do.	Fay Fruit Co.
" ...	Fitchburg and Boston & Maine.	Redlands O. G. Ass'n.
Buffalo, N. Y..	Lake Shore & Michigan So. Ry.	So. Cal. Fruit Exchange
" ...	Do.	Fay Fruit Co.
" (for G. B. Long & Co.)	Do.	All shippers.
Canadian points.	Grand Trunk railway.....	So. Cal. Fruit Exchange
(Also see Canadian points specifically mentioned herein, alphabetically.)		
Chattanooga, Tenn.	Southern railway.....	So. Cal. Fruit Exchange
Chicago, Ill...	Chicago, M. & St. P. Ry. or Chicago & Northwestern.	Earl Fruit Co.
" ...	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange
" ...	Do. ...	Fay Fruit Co.
" ...	Chicago, Mil. & St. Paul Ry. or Chicago & Northwestern Ry.	Ruddock, Trench & Co.
1174		
Chicago, Ill...	Chicago & Northwestern Ry.	Porter Bros. Co.
Cincinnati, O.	Pennsylvania railroad.....	So. Cal. Fruit Exchange.
" ...	C. C. C. & St. L. Ry. (Big Four).	Fay Fruit Co.
" ...	Pennsylvania railroad.....	Earl Fruit Co.
" (to Hammer & Co.)	Do.	Ruddock, Trench & Co.
" ...	Baltimore & Ohio R. R....	A. Gregory.

Destination.	Preferred delivery.	When shipped by—
Columbus, O.	Pennsylvania lines.....	A. Gregory.
" ...	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
" ...	Pan Handle.....	I. L. Lyon & Sons.
Cleveland, O.	Nickel Plate.....	A. Gregory.
" ...	Do.	I. L. Lyon & Sons.
" ...	Do.	West Am. Fruit Co.
" ...	Do.	So. Cal. Fruit Exchange.
Denver, Colo.	Union Pacific railroad.....	Fay Fruit Co.
" ...	Do.	Redlands O. G. Ass'n.
" ...	Do.	A. Gregory.
" ...	Do.	Redlands Eclipse O. Assn.
Des Moines, Ia.	C. R. I. & P. Ry.....	So. Cal. Fruit Exchange.
"	Do.	Ruddock, Trench & Co.
" (for Davidson Bros. Co.)	Do.	Covina O. G. Assn.
" (C. C. Taft & Co.)	Chicago, R. I. & P. Ry.....	Ruddock, Trench & Co.
" (Todd & Craft.)		
Detroit, Mich.	G. T.....	So. Cal. Fruit Exchange.
" ...	Grand Trunk Ry.....	Fay Fruit Co.
" ...	Michigan Central Ry.....	I. L. Lyon & Sons.
" ...	Do.	West-Am. Fruit Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Mich. So. Ry.	A. Gregory.
1175		
Galesburg, Ill.	Burlington route..... ...	I. L. Lyon & Sons
"	Do.	So. Cal. Fruit Exchange
Grand Island, Neb.	Do.	So. Cal. Fruit Exchange
Guelph, Ont..	Grand Trunk railway.....	So. Cal. Fruit Exchange
Hamilton, Ont.	Do.	So. Cal. Fruit Exchange
Hamilton, O..	Pan Handle.....	Ruddock, Trench & Co.
" ...	Do.	Earl Fruit Co.
" ...	Do.	A Gregory.
" ...	Do.	C. K. Short.
" (for Jno. Amicon & Bros.)	Do.	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L. (Big Four)	So. Cal. Fruit Exchange

Destination.	Preferred delivery.	When shipped by—
Jackson, Mich.	Michigan Central railway..	So. Cal. Fruit Exchange
Kansas City, Mo.	Missouri, Kan. & Tex. Ry..	Fay Fruit Co.
Keene, N. H..	Boston & Maine R. R.....	West-Am. Fruit Co.
Kalamazoo, Mich.	Michigan Central railway..	West-Am. Fruit Co.
Lafayette, Ind. (for Pottlitzer Bros.).	C. C. C. & St. L. Ry. (Big Four).	So. Cal. Fruit Exchange
La Salle, Ind.	Burlington route.....	Do.
Lima, O.....	Lake Erie Western Ry.....	Covina O. G. Ass'n.
" ...	Erie railroad	Altschul Bros. & Co.
Lincoln, Neb..	Burlington route or Chicago, Rock Island & P. Ry.	So. Cal. Fruit Exchange
Louisville, Ky.	Baltimore & Ohio S. W. Ry.	Do.
London, Can.	Michigan Central.....	Do.
Milwaukee, Wis.	Chicago, Milwaukee & St. P. Ry.	Fay Fruit Co.
" ...	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Minneapolis, Minn.	Chicago, Mil. & St. P. Ry...	So. Cal. Fruit Exchange
" ...	Do. ...	Covina O. G. Ass'n.

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Minneapolis, Minn.	Chicago, Mil. & St. P. Ry. or C. St. P. M. & O. R. R.	Porter Bros. Co.
Montreal, Que.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.
New York city.	Erie railroad.....	So. Cal. Fruit Exchange.
" ...	Do.	Covina O. G. Ass'n.
" ...	Do.	Fay Fruit Co.
" ...	Do.	Porter Bros. Co.
" ...	Do.	Ruddock, Trench & Co.
" ...	Do.	Earl Fruit Co.
" ...	Do.	Redlands O. G. Ass'n.
" ...	Do.	I. L. Lyon & Sons.
" ...	Baltimore & Ohio R. R...	A. Gregory.
" ...	Do. ...	F. B. Devine.
Omaha, Neb.,	Union Pacific railroad.....	So. Cal. Fruit Exchange.
" ...	Do.	Fay Fruit Co.
" ...	Burlington route.....	Redlands O. G. Ass'n.
" ...	Do.	I. L. Lyon & Sons.

Destination.	Preferred delivery.	When shipped by—
Oshkosh, Wis.	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Ottawa, Ont..	Canada Atlantic.....	Ruddock, Trench & Co.
Peoria, Ill.....	Burlington route.....	So. Cal. Fruit Exchange.
Philadelphia, Pa.	Baltimore & Ohio R. R...	Do.
" ...	Do. ...	Covina O. G. Ass'n
" ...	Do. ...	Sandilands Bros.
" ...	Pennsylvania lines.....	Fay Fruit Co.
" ...	Do.	I. L. Lyon & Sons.
" ...	Lehigh Valley R. R.....	Ruddock, Trench & Co.
" ...	Philadelphia & Reading...	Porter Bros. Co.
" ...	Do. ...	Earl Fruit Co.
" ...	Do. ...	Redlands Eclipse O. Ass'n.
Pittsburgh, Pa.	Baltimore & Ohio R. R.....	So. Cal. Fruit Exchange.

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Pittsburgh, Pa.	Pennsylvania lines. Penn. Co.	Earl Fruit Co.
" ...	Do. ...	Fay Fruit Co.
" ...	Do. ...	Ruddock, Trench & Co.
" ...	Do. ...	A. Gregory.
" ...	Do. ...	Moulton & Greene.
" ...	Do. ...	Sandilands Bros.
" ...	Do. ...	Sparr Fruit Co.
" ...	Do. ...	Covina O. G. Ass'n.
" ...	Do. ...	Salisbury Fruit Co.
Rochester, N. Y.	West Shore railway.....	Fay Fruit Co.
" ...	Lehigh Valley railroad....	Earl Fruit Co.
Scranton, Pa..	Delaware, Lackawanna & West'n.	So. Cal. Fruit Exchange
Sioux City, Ia.	Union Pacific railroad.....	So. Cal. Fruit Exchange
Springfield, Mass.	Boston & Albany R. R.....	Earl Fruit Co.
" (to H. J. Perkins)	Do.	Walter S. Newhall.
" ...	N. Y. N. H. & H. R. R.....	San Antonio Fr. Exch.
St. Louis, Mo.	St. Louis & San Francisco R. R.	Ruddock, Trench & Co.
" C. B. Q.	St. Louis, I. Mt. & So. Ry.	So. Cal. Fruit Exchange
" ...	Burlington route or Missouri, Kan. & Texas Ry.	Fay Fruit Co.

Destination.	Preferred delivery.	When shipped by—
New York city.	Erie railroad.....	So. Cal. Fruit Exchange.
" ...	Do.	Covina O. G. Ass'n.
" ...	Do.	Fay Fruit Co.
" ...	Do.	Porter Bros. Co.
" ...	Do.	Ruddock, Trench & Co.
" ...	Do.	Earl Fruit Co.
" ...	Do.	Redlands O. G. Ass'n.
" ...	Do.	I. L. Lyon & Sons.
" ...	Baltimore & Ohio R R.....	A. Gregory.
" ...	Do.	West-Am. Fruit Co.
Omaha, Neb..	Union Pacific railroad.....	So. Cal. Fruit Exchange.
" ...	Do.	Fay Fruit Co.
" ...	Burlington route.....	Redlands O. G. Ass'n.
" ...	Do.	I. L. Lyon & Sons.
Oshkosh, Wis.	Chicago, North-western Ry.	I. L. Lyon & Sons.
Ottawa, Ont...	Canada Atlantic.....	Ruddock, Trench & Co.
Peoria, Ill.....	Burlington route.....	So. Cal. Fruit Exchange.
Philadelphia, Pa.	Baltimore & Ohio R. R.....	So. Cal. Fruit Exchange.
" ...	Do.	Covina O. G. Ass'n.
" ...	Do.	Sandilands Bros.
" ...	Pennsylvania lines.....	Fay Fruit Co.
" ...	Do.	I. L. Lyon & Sons.
" ...	Lehigh Valley R. R.....	Ruddock, Trench & Co.
" ...	Philadelphia & Reading...	Porter Bros. Co.

1159

Philadelphia, Pa.	Philadelphia & Reading..	Earl Fruit Co.
" ...	Do. ...	Redlands Eclipse O. Ass.
Pittsburgh, Pa.	B. & O.....	So. Cal. Fruit Exchange.
" ...	Penn Co.....	Earl Fruit Co.
" ...	Do.	Fay Fruit Co.
" ...	Do.	Ruddock, Trench & Co.
" ...	Do.	A. Gregory.
" ...	Do.	Moulton & Greene.
" ...	Do.	Sandilands Bros.
" ...	Do.	Sparr Fruit Co.
" ...	Do.	Covina O. G. Ass'n.
" ...	Do.	Salisbury Fruit Co.
Rochester, N. Y.	West Shore railway.....	Fay Fruit Co.
" ...	Lehigh Valley R. R.....	Earl Fruit Co.
Scranton, Pa..	Delaware, Lackawanna & W. Ry.	So. Cal. Fruit Exchange.
Sioux City, Ia.	Union Pacific R. R.....	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
Springfield, Mass.	Boston & Albany R. R.....	Earl Fruit Co.
" (to H. J. Perkins.)	Do.	Walter S. Newhall.
" ...	N. Y. N. H. & H. R. R.....	San Antonio Fr. Ex.
St. Louis, Mo.	St. Louis & San Fran. R. R.	Ruddock, Trench & Co.
" See letter.	St. Louis, I. Mt. & So. Ry...	So. Cal. Fruit Exchange.
St. Paul, Minn.	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
" ...	C. St. P. M. & O. or C. M. & St. P.	Porter Bros. Co.
" ...	Do.	Fay Fruit Co.
Syracuse, N. Y.	New York Central & H. R. R.	Ruddock, Trench & Co.
1160		
Toledo, O.....	Lake Shore & Mich. Southern.	So. Cal. Fruit Exchange.
Utica, N. Y...	Delaware, Lackawanna & West'n Ry.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R...	So. Cal. Fruit Exchange.
" ...	Pennsylvania lines.....	Earl Fruit Co.
Waterloo, Ia..	Chicago Great Western Ry.	So. Cal. Fruit Exchange.
Wheeling, W. Va.	Baltimore & Ohio R. R.....	So. Cal. Fruit Exchange.
Winona, Minn.	Burlington route.....	West-Am. Fruit Co.
Worcester, Mass.	Fitchburg.....	West-Am. Fruit Co.
Winnipeg, Man.	Northern Pacific Ry.....	I. L. Lyon & Sons.
Youngstown, O.	Baltimore & Ohio R. R....	I. L. Lyon & Sons.

Preferred Deliveries by Switching Service.

Pages 6, 7, 8, and 9, show shippers PREFERRED DELIVERING LINES in various cities. At points shown below, such preferred deliveries may be effected by switching service; therefore, to prevent a line receiving more than its allotment, business may be routed via another line and desired *delivery* be given

Point.	Lines that will perform switching for each other.
Kansas City, Mo...	St. Louis & San Francisco R. R. Missouri, Kansas & Texas Ry. Chicago, Rock Island & Pacific Ry.

Point.	Lines that will perform switching for each other.
St. Louis, Mo.....	Wabash railroad. St. Louis, Iron Mountain & Southern Ry. St. Louis & San Francisco R. R. Missouri, Kansas & Texas Ry. Chicago & Alton Ry.

1161

Cincinnati, O.....	Pennsylvania railroad. Baltimore & Ohio R. R. Cleveland, Cincinnati, Chicago & St. Louis Ry.
Buffalo, N. Y.....	Grand Trunk railway. Lake Shore & Michigan Southern Ry. Michigan Central Ry. New York, Chicago & St. Louis Ry. (New York Central & Hudson River R. R. perform all switching service for the three lines last named. Hence those lines have no deliveries in Buffalo, excepting in the New York Central freight depot or team track. Lines therefore performing switching would be the N. Y. C. & H. R. R. R. and the Grand Trunk railway.)

NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 4 and 5) or "Delivering line instructions" (see pages 6, 7, 8, and 9,) must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

1162 It is appreciated that it may be difficult for you to route this traffic on a percentage basis as the cars move daily to points east of Chicago and St. Louis, and at times to points west thereof, but you are to do the best you can, in line with these instructions—which, however, are liable to be changed at any time.

When but few cars are shipped, all may be routed one day via one route; via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly,

G. W. LUCE.

N. B.—*Acknowledge receipt by return mail.*

C C to Mr. Wm. Sproule, F. T. M., San Francisco.
Mr. W. G. Neimyer, G. W. A., Chicago.

1163 (7-6-'00-2M.) 2. TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.
Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc. In your reply please refer to A-1-16000.

(Confidential.)

This letter cancels previous letter of February 16, 1901.

LOS ANGELES, CAL., March 11, 1901.

Mr. Chas. Seyler, agent, S. P. Co., Los Angeles, Cal.
Mr. D. A. Bruce, agent, S. P. Co., Colton, Cal.

Routing Citrus Fruit Shipments.

GENTLEMEN: Commencing today (March 11th, 1901), you will please route all shipments of citrus fruit destined to territory named below, as follows:

Montana business, route via Ogden.
Colorado common points, route:

1164 Via Union Pacific railroad..... 40 per cent.
Via Rio Grande Western railway..... 60 per cent.

Rio Grande Western Ry. proportion, route:

Via Colorado Midland railway..... 50 per cent.
Via Denver & Rio Grande railway ..... 50 per cent.

Salt Lake City, Utah, business, route:

Via Rio Grande Western railway..... 100 per cent.

Yours truly, G. W. LUCE.

CC to Mr. Wm. Sproule."

1165 (7-6-'00—2M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system.
261 South Spring street,
(Douglas building.)
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc.

In your reply, please refer to A-1-16000

(Confidential.)

NOTE.—This letter cancels all previous routin- and delivering line instructions.

LOS ANGELES, CAL., March 30, 1901.

Mr. Chas. Selyer, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Los An. Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 267, effective February 1st, 1901, announcing: "In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee."

1166 Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit if routing instructions are shown thereon. Agents will therefore not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates change therein.

You will, therefore, commencing March 30th, 1901, please route Trans-continental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railway
Texas & Pacific railway.
Southern Pacific Co. (Atlantic system, incl. New Orleans).

The remainder, route:

Via Ogden	50 per cent.
Via El Paso	50 per cent.

Business via Ogden, route:

Via Union Pacific system	70 per cent.
Via Rio Grande Western railway	30 per cent.

Union Pacific System business, route:

	Via Chicago & Northwestern railway	45 per cent.
1167	Via Illinois Central railroad. (See note below)..	40 per cent.
	Via Chicago, Milwaukee & St. Paul railway...	15 per cent.

NOTE.—Do not route Chicago business via the Illinois Central railroad.

NOTE.—Give the Rio Grande Western Ry. its proportion in trainloads of 15 cars or more. This can be done by not giving them business every day.

Rio Grande Western Ry. proportion, route: (excepting Chicago business, routing for which see note below.)

Via Denver & Rio Grande R. R., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.	70 per cent.
Via Colorado Midland railway, Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.	30 per cent.

NOTE.—Chicago business via Rio Grande Western Ry. route from Missouri river:

Via Chicago & Northwestern railway	80 per cent.
Via Chicago, Milwaukee & St. Paul Ry	20 per cent.

Business via El Paso, route:

Via Texas & Pacific railway	100 per cent.

Texas & Pacific Ry. business, route:

From Texarkana, Tex., via St. Louis, I. Mt. & So. Ry. to St. Louis	45 per cent.
From Paris, Tex., via St. Louis & San Francisco R. R. to St. Louis	15 per cent.

base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs. exceptions noted, and are subject to change without notice, except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of car, when space permits.)

In your reply please refer to A–1–16000

(Confidential.)

LOS ANGELES, CAL., May 27th, 1901.

NOTE.—This letter cancels all previous routing and delivering line instructions.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit South of Mojave.

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 267, effective February 1st, 1901, announcing:

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee."

1185 Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit if routing instructions are shown thereon. Agents will therefore not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates change therein.

You will, therefore, commencing May 28th, 1901, please route transcontinental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system
Union Pacific railroad
Rio Grande Western railway
Texas & Pacific railway
Southern Pacific Co. (Atlantic system, inc. New Orleans.)

The remainder, route:

Via Ogden..... 90 per cent.
Via El Paso..... 10 per cent.

Business via Ogden, route:

Via Union Pacific railroad..... 70 per cent.
Via Rio Grande Western.. ..... 30 per cent.

Union Pacific system business, route:

Via Chicago & Northwestern railway ..... 45 per cent.

1186 Via Illinois Central railroad (see note below)... 40 per cent.
Via Chicago, Milwaukee & St. Paul railway..... 15 per cent.

NOTE.—Do not route Chicago business via the Illinois Central railroad.

Rio Grande Western Ry. proportion, route:
Excepting Chicago business, routing for which see note below.)
Via Denver & Rio Grande R. R., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R..... 70 per cent.
Via Colorado Midland Ry., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R..... 30 per cent.

NOTE.—Chicago business via Rio Grande Western Ry. route from Missouri river:

Via Chicago & Northwestern railway..... 80 per cent.
Via Chicago, Milwaukee & St. Paul Ry..... 20 per cent.

NOTE.—Give the Rio Grande Western Ry. its proportion in train loads of 15 cars or more. This can be done by not giving them business every day.

Business via El Paso, route:

Via Texas & Pacific railway..... 100 per cent.

Texas & Pacific Railway business, route:

From Texarkana, Tex., via St. Louis, I. Mt. & So. Ry. to St. Louis..... 35 per cent.
From Paris, Texas, via St. Louis & San Francisco R. R. to St. Louis ..... 25 per cent.
From Ft. Worth, Tex., via Chicago, R. I. & Texas Ry. and Chicago, R. I. & Pacific Ry. to Kansas City..... 25 per cent.
From Ft. Worth, Tex. via Missouri, Kansas & Texas Ry..... 15 per cent.

Chicago, Rock Island & Pacific Ry. proportion, route from Kansas City:

1187 Via Chicago, Milwaukee & St. Paul Ry. (See note below)..... ..... 50 per cent.
Via Chicago Great Western railway..... 20 per cent.
Via Chicago, Rock Island & Pacific railway..... 30 per cent.

NOTE.—Route all Chicago business forwarded via the Chicago Rock Island & Texas Ry. from Ft. Worth via the Chicago, Milwaukee & St. Paul Ry. at Kansas City, also enough other business to make up the latter's allotment as above.

Missouri, Kansas & Texas Ry. proportion, route:

Via Kansas City ..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion via Kansas City, route:

Via Chicago, Milwaukee & St. Paul railway..... 50 per cent.
Via Chicago Great Western railway..... 25 per cent.
Via Chicago & Alton railway..... 25 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined to Chicago only.)

St. Louis, Iron Mt., & Southern Ry., St. Louis & San Francisco and Missouri, Kansas & Texas Ry. proportion via St. Louis to Chicago, route:

Via Wabash railroad..... ..... 70 per cent.
Via Chicago & Alton railroad..... 30 per cent.

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan So. Ry. (to Buffalo).. 10 per cent.
Via Michigan Central railway do. ... 20 per cent.
Via New York, Chicago & St. Louis Ry. do. ... 20 per cent.
Via Grand Trunk railway do. ... 20 per cent.
Via Pennsylvania lines..... ..... *25 per cent.* 25 per cent.

1188 * Via Baltimore & Ohio railroad..... 05 per cent.

* Preferred deliveries will take care of B. & O. percentage.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River railroad..... 20 per cent.
Via West Shore railway..... 20 per cent.
Via Delaware, Lackawanna & Western railroad..... 20 per cent.
Via Lehigh Valley railroad..... 20 per cent.
Via Erie railroad..... 20 per cent.

Business via St. Louis to points east thereof (except Chicago, route :)

Via Wabash railroad..... ..... 20 per cent.

(New York business via Wabash R. R. route Erie R. R. Boston business via Wabash route via Canadian Pacific R. R., care Boston & Maine R. R., Newport, Me., Fitchburg delivery.)

Via Pennsylvania lines..... 35 per cent.
Via Baltimore & Ohio Southwestern R. R..... 10 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)—Connections for New York business are Lake Shore & Michigan Southern and Erie railroads..... 35 per cent.

Montana business, route via Ogden:
Salt Lake City (Utah) business, route:

Via Rio Grande Western railway..... 100 per cent.

Colorado common points, route:

Via Union Pacific railroad..... 50 per cent.
Via Rio Grande Western railway..... ..... 50 per cent.

Rio Grande Western Ry. propertion, route:

Via Colorado Midland railway..... 50 per cent.
Via Denver & Rio Grande railroad..... 50 per cent.

1189 Specific Routings.

Atlanta, Ga., shipments, route:
Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.
Baltimore shipments, route:

Via Baltimore & Ohio railroad, when via Chicago..... 66⅔ per cent.
Via Pennsylvania lines..... 33⅓ per cent.

Boston shipments, route:
In care of Boston & Maine Ry. (Fitchburg division,) at Rotterdam Junction, Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry. at Newport.
When via the Wabash railroad, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.
Cincinnati, O., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Columbus, O., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Duluth shipments, route:
Via the Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.
Fargo, S. D., shipments, route:
Via the Union Pacific railroad Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry., at St. Paul.
Fort Dodge, Ia., shipments, route:
Via Union Pacific R. R. to Council Bluffs, thence via the Illinois Central railroad.
Grand Forks, N. D., shipments, route:
Via the Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry.
1190 Indianapolis, Ind., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four) through St. Louis.

Specific Routings, Continued.

Lafayette, Ind., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Louisville, Ky., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Minneapolis shipments, route:
Via Ogden, Union Pacific railroad and Chicago, St. Paul, Minneapolis & Omaha railway.
Nashville, Tenn., shipments, route:
Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.
New York city shipments, route:
Via the Erie railroad from Buffalo.
Philadelphia shipments, route:

Via the Pennsylvania lines	66⅔ per cent.
Via the Baltimore & Ohio R. R. when via Chicago	33⅓ per cent.

Pittsburgh shipments, route:
Via the Pennsylvania lines.
Sioux City Ia. shipments, route:
Via the Union Pacific railroad.
St. Paul shipments, route:
Via Ogden, Union Pacific railroad and Chicago, St. Paul, Minneapolis and Omaha railway.
Wichita, Kan., shipments, route:
Via Chicago, Rock Island & Pacific Ry. at Ft. Worth, Tex.

Winnipeg shipments, route:

Via Union Pacific railroad, Chicago, St. Paul, Minneapolis
1191 and Omaha railway, care northern Pacific Ry. at St. Paul.

On business moving through New Orleans: to points shown below, routing as indicated must be observed.

Atlanta, Ga.:—Via Louisville & Nashville R. R., Western Ry. of Alabama, and Atlanta & West Point R. R.

Asheville, N. C.:—Via Louisville & Nashville R. R., Western Ry. of Alabama and Southern railway.

Birmingham, Ala.:—Via New Orleans & Northeastern Ry. and Alabama Great Southern railway.

Charleston, S. C.:—Via Louisville & Nashville R. R., Georgia railroad and Southern railway.

Jacksonville, Fla.:—Via Louisville & Nashville R. R. and Plant system.

Macon, Ga.:—Via Louisville & Nashville R. R., Western Railway of Alabama and Central of Georgia railway.

Mobile, Ala.:—Via Louisville & Nashville R. R.

Montgomery, Ala.:—Via Louisville & Nashville railroad.

Savannah, Ga.:—Via Louisville & Nashville R. R. and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line or lines, as shown *must be used.*

Destination.	Preferred delivery.	When shipped by—
Aberdeen, S. D.	Chicago, Mil. & St. P. Ry...	Porter Bros. Co.
Albany, N.Y..	Delaware & Hudson Co...	Earl Fruit Co.
Aberdeen, Ind., for Moulton & Riedel.	C. C. C. & St. L. Ry. (Big Four).	So. Cal. Fruit Exchange.

1192

Atlanta, Ga...	Southern railway.....	So. Cal. Fruit Exchange.
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
"	Baltimore & Ohio R. R...	So. Cal. Fruit Exchange.
"	Do. ...	Fay Fruit Co.
"	Do. ...	A. Gregory.
Birmingham, Ala.	Southern railway.....	So. Cal. Fruit Exchange.
Boston, Mass..	Fitchburg railway.....	A. Gregory.
"	Do.	West Am. Fruit Co.
"	Do.	I. L. Lyon & Sons.
"	Do.	So. Cal. Fruit Exchange.
"	Do.	Fay Fruit Co.
"	Fitchburg and Boston and Maine.	Redlands O. G. Ass'n.

Destination.	Preferred delivery.	When shipped by—
Buffalo, N. Y..	Lake Shore & Mich. So. Ry.	So. Cal. Fruit Exchange.
"	Do. ...	Fay Fruit Co.
" (for G. B. Long & Co.)	Do. ...	All shippers.
Canadian points.	Grand Trunk railway.....	So. Cal. Fruit Exchange.
(Also see Canadian points specifically mentioned herein, alphabetically.)		
Chattanooga, Tenn.	Southern railway.....	So. Cal. Fruit Exchange.
Chicago, Ill...	Chicago, Mil. & St. P. Ry. or Chicago & Northwestern Ry.	Earl Fruit Co.
"	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
"	Do. ...	Fay Fruit Co.
"	Chicago, Mil. & St. P. Ry. or Chicago & Northwestern Ry.	Ruddock, Trench & Co.
"	Chicago & Northwestern Ry.	Porter Bros. Co.
" (to N. A. Coble & Co,)	Illinois Central railroad...	Redlands Eclipse O. Ass'n.
Cincinnati, O.	Pennsylvania railroad.....	So. Cal. Fruit Exchange.
1193		
Cincinnati, O.	C. C. C. & St. L. (Big Four).	Fay Fruit Co.
" ...	Pennsylvania railroad.....	Earl Fruit Co.
" (to Hammer & Co)	Do.	Ruddock, Trench & Co.
"	Baltimore & Ohio R. R...	A. Gregory.
Columbus, O..	Pennsylvania lines.....	A. Gregory.
" ...	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
" ...	Pan Handle.....	I. L. Lyon & Sons.

Preferred Delivering Lines.

Cleveland, O..	Nickel Plate.....	A. Gregory.
" ...	Do.	I. L. Lyon & Sons.
" ...	Do.	West Am. Fruit Co.
" ...	Do.	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
Denver, Colo..	Union Pacific railroad.....	Fay Fruit Co.
" ...	Do.	Redlands O. G. Ass'n.
" ...	Do.	A. Gregory.
" ...	Do.	Redlands Eclipse O.Ass'n.
Des Moines, Ia.	Chicago, R. I. & Pacific Ry.	So. Cal. Fruit Exchange.
" ...	Chicago, Great Western Ry.	Ruddock, Trench & Co.
" (for Davidson Bros.)	Do. ...	Covina O. G. Ass'n.
" (for C. C. Taft & Co.)	C. R. I. & P. Ry.....	Ruddock, Trench & Co.
Detroit, Mich.	Grand Trunk railway.....	So. Cal. Fruit Exchange.
" ...	Do.	Fay Fruit Co.
" ...	Michigan Central railway.	I. L. Lyon & Sons.
" ...	Do. ...	West-Am. Fruit Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Mich. So. Ry.	"
Galesburg, Ill.	Burlington route.....	I. L. Lyon & Sons.
" ...	Do.	So. Cal. Fruit Exchange.
Grand Island, Neb.	Do.	Do.
1194		
Guelph, Ont..	Grand Trunk railway.....	Do.
Hamilton, Ont.	Do.	Do.
Hamilton, O.	Pan Handle.....	Ruddock, Trench & Co.
" ...	Do.	Earl Fruit Co.
" ...	Do.	A. Gregory.
" ...	Do.	C. K. Short.
" (for J. Amicon & Bros.)	Do.	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L. (Big Four)	So. Cal. Fruit Exchange.
Jackson, Mich.	Michigan Central railway.	Do.
Kansas City, Mo.	Missouri, Kan. & Tex. Ry..	Fay Fruit Co.
Keene, N. H..	Boston & Maine R. T.....	West-Am. Fruit Co.
Kalamazoo, Mich.	Michigan Central Ry.....	Do.

Destination.	Preferred delivery.	When shipped by—
Lafayette, Ind (for Pottlitzer Bros.)	C. C. C. & St. L. Ry. (Big Four)	So. Cal. Fruit Exchange.
La Salle, Ind.	Burlington route.....	Do.
Lima, O	Lake Erie Western Ry.....	Covina O. G. Ass'n.
"	Erie railroad.....	Altschul Bros. & Co.
Lincoln, Neb.	Burlington route or Chicago, R. I. & P. Ry.	So. Cal. Fruit Exchange.
Louisville, Ky.	Baltimore & Ohio S. W. R. R.	Do.
London, Can.	Michigan Central Ry.....	Do.
Milwaukee, Wis.	Chicago, Mil. & St. P. Ry..	Fay Fruit Co.
Milwaukee....	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Minneapolis, Min.	Chicago, Mil. & St. P. Ry..	So. Cal. Fruit Exchange.
" ...	Do. ..	Covina O. G. Ass'n.
" ...	Do. or C. St. P. M. & O. Ry.....	Porter Bros. Co.
Montreal, Que.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.
New York city.	Erie railroad.....	So. Cal. Fruit Exchange.
" ...	Do.	Covina O. G. Ass'n.

1195

New York city.	Erie railroad..	Fay Fruit Co.
" ...	Do.	Porter Bros. Co.
" ...	Do.	Ruddock, Trench & Co.
" ...	Do.	Earl Fruit Co.
" ...	Do.	Redlands O. G. Ass'n.
" ...	Do.	I. L. Lyon & Sons.
" ...	Baltimore & Ohio R. R...	A. Gregory.
" ...	Do. ...	A. B. Devine.
Omaha, Neb..	Union Pacific R. R	So. Cal. Fruit Exchange.
" ...	Do.	Fay Fruit Co.
" ...	Burlington route.....	Redlands O. G. Ass'n.
" ...	Do.	I. L. Lyon & Sons.
Oshkosh, Wis.	Chicago & Northwestern Ry.	Do.
Ottawa, Ont..	Canadian Atlantic.....	Ruddock, Trench & Co.
Peoria, Ill.....	Burlington route.....	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
Philadelphia, Pa.	Baltimore & Ohio R. R...	Do.
"	... Do.	... Covina O. G. Ass'n.
"	... Do.	... Sandilands Bros.
"	... Pennsylvania lines.....	Fay Fruit Co.
"	... Do.	... . I. L. Lyon & Sons.
"	... Lehigh Valley R. R.....	Ruddock, Trench & Co.
"	... Philadelphia & Reading...	Porter Bros. Co.
"	... Do.	... Earl Fruit Co.
"	... Do.	... Redlands Eclipse O. G. Ass.
Pittsburgh, Pa.	Penn. Co.....	So. Cal. Fruit Exchange.
"	... Pennsylvania lines.....	Earl Fruit Co.
"	... Do.	..... Fay Fruit Co.
"	... Do.	..... Ruddock, Trench & Co.
"	... Do.	..... A. Gregory.
1196	... Do.	..... Moulton & Greene.
Pittsburgh, Pa.	Pennsylvania lines.....	Sandiland Bros.
"	... Do.	..... Sparr Fruit Co.
"	... Do.	..... Covina O. G. Ass'n.
"	... Do.	..... Salisbury Fruit Co.
"	... Do.	..... F. H. Edwards.
"	... Do. or B. & O. R. R.	So. Cal. Fruit Exchange.
Rochester, N. Y.	West Shore Ry	Fay Fruit Co.
"	... Lehigh Valley R. R.....	Earl Fruit Co.
Scranton, Pa.	Delaware, Lackawanna & Western	So. Cal. Fruit Exchange.
Sioux City, Ia.	Union Pacific R. R.....	Do.
Springfield, Mass.	Boston & Albany R. R....	Earl Fruit Co.
" (To H. J. Perkins)	Do.	... Walter S. Newhall.
"	... N. Y., N. H. & H. R. R....	San Antonio Fr. Exchange.
St. Louis, Mo.	St. Louis & S. F. R. R.....	Ruddock, Trench & Co.
St. Louis, Mo.	Burlington route.....	So. Cal. Fruit Exchange.
"	... Do. or Missouri, Kansas & Tex. Ry.	Fay Fruit Co.
St. Paul, Minn.	Chicago, Mil. & St. P. Ry.	So. Cal. Fruit Exchange.
"	... C. St. P. M. & O. or C. M. & St. P. Ry.....	Porter Bros. Co.
"	... C. St. P. M. & O. R. R.....	Fay Fruit Co.

Destination.	Preferred delivery.	When shipped by—
St. Paul, Minn.	Chicago, Milwaukee & St. P. Ry.	So. Cal. Fruit Exchange
" ...	C. St. P. M. & O. or C M & St P. Ry.	Porter Bros. Co.
" ...	C. St. P. M. & O. R. R.....	Fay Fruit Co.
Syracuse, N. Y.	New York Central & H. R. R. R.	Ruddock, Trench & Co.
Toledo, O.....	Lake Shore & Mich. So. Ry.	So. Cal. Fruit Exchange
Toronto, Can.	Canadian Pacific Ry.....	So. Cal. Fruit Exchange
Utica, N. Y...	Delaware, Lackawanna & Western	Earl Fruit Co.

1178

Washington, D. C.	Baltimore & Ohio R. R.....	So. Cal. Fruit Exchange.
" ...	Pennsylvania lines.....	Earl Fruit Co.
Waterloo, Ia..	Chicago, Great Western Ry.	So. Cal. Fruit Exchange.
Wheeling, W. Va.	Baltimore & Ohio R. R.....	Do.
Winona, Minn.	Burlington route.....	West-Am. Fruit Co.
Worcester, Mass.	Fitchburg railway.....	Do.
Winnipeg, Man.	Northern Pacific Ry.....	I. L. Lyon & Sons.
Youngstown, O.	Baltimore & Ohio R. R.....	I. L. Lyon & Sons.

Preferred Deliveries by Switching Service.

Pages 8, 9, 10 and 11 show shippers' preferred delivering lines in various cities. At points shown below, such preferred deliveries may be effected by switching service. Therefore, to prevent a line receiving more than its allotment, business may be routed via another line, and desired *delivery* be given.

Point.	Lines that will perform switching for each other.
Kansas City, Mo.....	St. Louis & San Francisco railroad Missouri, Kansas & Texas railway. Chicago, Rock Island & Pacific railway
St. Louis, Mo.....	Wabash railroad St. Louis, Iron Mt. & Southern railway. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway Chicago & Alton railway.

1179

Cincinnati, O.....	Pennsylvania railroad. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis Ry.

NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—'Specific routings' (see pages 5, 6, and 7,) or 'Delivering line instructions' (see pages 8, 9, 10 and 11,) must be adhered to. Should they conflict, 'Delivering line instructions' will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis as the cars move daily to points east of Chicago and St. Louis, and at times to points west thereof, but you are to do the best you can in line with there instructions—which, however, are liable to be changed at any time.

When but few cars are shipped, all may be routed one day via one route; via another route the next day, and so on, but the result to be as above, as nearly as possible

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly, G. W. LUCE.

N. B.—Acknowledge receipt by return mail.

CC to Mr. Wm. Sproule, F. T. M., San Francisco. Mr. W. G. Neimyer, G. W. A., Chicago."

1180 (7-6-'00 2M.) 2 TG. 90.

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agt.,
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc.

In your reply, please refer to A-1-16000

(Confidential.)

LOS ANGELES, CAL., April 6, 1901.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing Citrus Fruit Shipments So. of Mojave.

GENTLEMEN: Referring to my routing instructions' letter of March 30th, 1901, please amend "Specific routings," shown on pages 5 and 6 as follows:

Duluth shipments, route:
Via the Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

1181 Fargo, S. D. shipments, route:
Via the Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry. care Northern Pacific Ry. at St. Paul.

Grand Forks, N. D., shipments, route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

Winnipeg shipments, route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

Also please observe the following preferred deliveries in lieu of those shown on pages 9 and 11, respectively:

Detroit, Mich.	Grand Trunk railway.	So. Cal. Fruit Exchange.
St. Louis, Mo.	Chicago, Burlington & Q. Ry.	Do.

Yours truly,
G. W. LUCE.

CC W. S.
W. G. N.

1182 (7-6-'00-2M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., excep-

tions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

Mc.

In your reply, please refer to A-1-16000

(Confidential.)

LOS ANGELES, CAL., April 14, 1901.

Mr. Chas. Seyler, agent S. P. Co., Los Angeles, Cal.
Mr. D. A. Bruce, agent, S. P. Co., Colton, Cal.

Routing Citrus Fruit Shipments.

GENTLEMEN: Referring to my routing instructions' letter A-1-16000 of March 30th, 1901, please add to "Specific routings" the following:

St. Paul and Minneapolis shipments, route:

Via Ogden, Union Pacific railroad and Chicago, St. Paul, Minneapolis & Omaha railway.

1183 Also please observe the following preferred deliveries:

Destination.	Preferred delivery.	When shipped by—
Chicago, Ill. (to N. A. Coble & Co.)	Illinois Central R. R.....	Redlands Eclipse O. A.
Pittsburgh, Pa. (to Conley & McFee.)	Pennsylvania railroad.....	F. H. Edwards.
Pittsburgh, Pa.	Pennsylvania railroad or Baltimore & Ohio R. R.	So. Cal. Fruit Exchange

Yours truly,

G. W. LUCE.

CC to Mr. Wm. Sproule.
Mr. W. G. Neimyer.

1184 (3-16-'01-5M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)
Mc.

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. ag't.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in car loads will

In your reply, please refer to B 1–13259.

(Confidential.)

NOTE.—*This letter cancels all previous routing and delivering line instructions.*

LOS ANGELES, November 14th, 1901.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Transcontinental Freight Bureau eastbound special tariff No. S. R. 267, effective February 1st, 1901,
1208 announcing:

"In guaranteeing the through rate named herein, the" "absolute unqualified right of routing beyond its own termi-" "nal is reserved to initial carrier giving guarantee."

Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon. Agents will, therefore, not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates change therein.

You will, therefore, commencing November 15th, 1901, please route trans-continental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system
Union Pacific railroad
Rio Grande Western railroad
Texas & Pacific railway
Southern Pacific Co. (Atlantic system, inc. New Orleans.)

The remainder route:

Via El Paso	90 per cent.
Via Ogden	10 per cent.

1209 Business via El Paso, route:

Via Texas & Pacific Ry	100 per cent.

Texas & Pacific Railway business, route:

From Texarkana, Tex., via St. L. I. M. & Southern Ry. to St. Louis	30 per cent.
From Paris, Tex., via St. Louis & San Francisco R. R. to St. Louis	25 per cent.

From Ft. Worth, Tex., via C. R. I. & T. Ry. and C. R. I. & P. Ry. to Kansas City..... 30 per cent.
From Ft. Worth, Tex., via Missouri, Kansas & Texas Ry..... 15 per cent.

Chicago, Rock Island & Pacific Ry. proportion route from Kansas City:

Via Chicago, Milwaukee & St. Paul Ry..... 30 per cent.
Via Chicago Great Western Ry..... 20 per cent.
Via Chicago, Rock Island & Pacific Ry..... 50 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment as nearly as can be, of business destined to Chicago only.)

Missouri, Kansas & Texas Ry. proportion, route:

Via Kansas City..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion via Kansas City, route:

Via Chicago, Milwaukee & St. Paul Ry..... 50 per cent.
Via Chicago Great Western Ry..... 25 per cent.
Via Chicago & Alton Ry..... 25 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as near as can be, of business destined to Chicago only.)

1210 Missouri, Kansas & Texas Ry. proportion via St. Louis, to or via Chicago, route:

Via Wabash railroad..... 70 per cent.
Via Chicago & Alton..... 30 per cent.

St. Louis, Iron Mt. & Southern Ry. and St. Louis & San Francisco Ry. via St. Louis to Chicago, route:

Via Wabash railroad..... 70 per cent.
Via Chicago & Alton..... 30 per cent

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan Southern Ry. (to Buffalo)..... 20 per cent.
Via Michigan Central Ry. do..... 20 per cent.
Via New York, Chicago & St. Louis Ry. do. ... 20 per cent.
Via Grand Trunk railway do..... 10 per cent.
Via Pennsylvania lines..... 15 per cent.
Via Baltimore & Ohio Ry..... 15 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R... 30 per cent
Via West Shore railway..... 30 per cent.
Via Delaware, Lackawanna & Western R. R..... 20 per cent.
Via Lehigh Valley railroad..... 20 per cent.

Business via St. Louis to points east thereof (except Chicago) route:

	Via Wabash railroad	20 per cent.
	New York business via Wabash, R. R. route—Erie R. R.	20 per cent.
	Boston business via Wabash R. R. route via Canadian Pacific R. R., care Boston & Maine R. R., Newport, Me., Fitchburg delivery	20 per cent.
	Via Pennsylvania lines	20 per cent.
1211	Via Baltimore & Ohio Southwestern Ry	25 per cent.
	Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four). Connections for New York business are Lake Shore & Michigan Southern and Erie railroads	35 per cent.

Business via Ogden route:

It is expected that specific routings (see pages 4 and 5) will give to the Ogden route its full proportion of 10 per cent.

Specific Routings.

Atlanta, Ga., shipments route:

Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.

Baltimore shipments route:

Via Baltimore & Ohio railroad when via Chicago	66⅔ per cent.
Via Pennsylvania lines	33⅓ per cent.

Boston shipments route:

In care Boston & Maine Ry. (Fitchburg division) at Rotterdam Junction, Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry., at Newport.

When via the Wabash railroad, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

Cincinnati, O., shipments route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Columbus, O., shipments route:

Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

1212 Duluth shipments route:

Via the Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry., at St. Paul.

Fargo, S. D., shipments route:

Via the Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

Fort Dodge, Ia., shipments route:
Via Union Pacific R. R. to Council Bluffs, thence via the Illinois Central railroad.
Grand Forks, N. D., shipments route:
Via the Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry.
Indianapolis, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four) through St. Louis.
Lafayette, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Louisville, Ky., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Minneapolis shipments route:
Via Ogden, Union Pacific railroad, and Chicago, St. Paul Minneapolis & Omaha railway.
Nashville, Tenn., shipments route:
Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.
New York city shipments route:
Via the Erie railroad from Buffalo.
1213 Philadelphia shipments, route:
Via the Pennsylvania lines..... 66⅔ per cent.
Via the Baltimore & Ohio R. R. when via Chicago..... 33⅓ per cent.
Pittsburgh shipments, route:
Via the Pennsylvania lines.
Sioux City, Ia., shipments, route:
Via the Union Pacific railroad.
St. Paul shipments, route:
Via Ogden, Union Pacific railroad and Chicago, St. Paul, Minneapolis & Omaha railway.
Wichita, Kan., shipments route:
Via Chicago, Rock Island & Pacific Ry. at Ft. Worth, Tex.
Winnipeg shipments route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha railway, care Northern Pacific Ry. at St. Paul.

On business moving through New Orleans, to points shown below, routing as indicated must be observed:

Atlanta, Ga.: Via Louisville & Nashville R. R., Western Ry. of Alabama and Atlanta & West Point R. R.
Asheville, N. C.: Via New Orleans & Northwestern Ry. and Alabama Great Southern railway.
Charleston, S. C.: Via Louisville & Nashville R. R., Georgia railroad.
Jacksonville, Fla.: Via Louisville & Nashville R. R. and Plant system.

Macon, Ga.: Via Louisville & Nashville R. R., Western Railway of Alabama, and Central of Georgia railway.
Mobile, Ala.: Via Louisville & Nashville R. R.
Montgomery, Ala.: Via Louisville & Nashville railroad.
1214 Savannah, Ga.: Via Louisville & Nashville R. R. and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line or lines, as shown *must be used.*

Destination.	Preferred delivery.	When shipped by—
Aberdeen, S. D.	Chicago, Mil. & St. Paul Ry.	Porter Bros. Co.
Albany, N. Y..	Delaware & Hudson Co...	Earl Fruit Co.
Aberdeen, Ind. for Moulton & Riedel.	C. C. C. & St. L. (Big Four).	So. Cal. Fruit Exchange.
Atlanta, Ga...	Southern railway.....	So. Cal. Fruit Exchange.
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
" ...	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange.
" ...	Do. ...	Fay Fruit Co.
" ...	Do. ...	A. Gregory.
Birmingham, Ala.	Southern railway..... ...	So. Cal. Fruit Exchange.
Boston, Mass..	Fitchburg railway.....	A. Gregory.
" ...	Do.	West Am. Fruit Co.
" ...	Do.	O. L. Lyon & Sons.
" ...	Do.	So. Cal. Fruit Exchange.
" ...	Do.	Fay Fruit Co.
" ...	Fitch. and Boston & Maine.	Redlands O. G. Ass'n.
Buffalo, N. Y.	Lake Shore & Mich. So'n Ry.	So. Cal. Fruit Exchange.
" ...	Do.	Fay Fruit Co.
" (G. B. Long & Co.)	Do.	All shippers.
Canadian points.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.

1215

Destination.	Preferred delivery.	When shipped by—
Also see Canadian points specifically mentioned herein, alphabetically.		
Chattanooga, Tenn:	Southern Ry	So. Cal. Fruit Exchange
Chicago, Ill...	Chicago, Mil. & St. Paul Ry. or Chicago & Northwestern Ry.	Earl Fruit Co.
" ...	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
" ...	Do.	... Fay Fruit Co.
" ...	C. M. & St. P. or C. & N. W. Ry.	Ruddock, Trench & Co.
" ...	Chicago & Northwestern Ry.	Porter Bros. Co.
" ...	Illinois Central R. R.....	Redlands Eclipse O. Assn.
Cincinnati, O.	Pennsylvania R. R.....	So. Cal. Fruit Exchange
" ...	C. C. C. & St. L. (Big Four)	Fay Fruit Company.
" ...	Pennsylvania railroad.....	Earl Fruit Co.
" Hammer & Co.	Do.	..... Ruddock, Trench & Co.
" ...	Baltimore & Ohio R. R....	A. Gregory.
Columbus, O..	Pennsylvania lines	A. Gregory.
" ...	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
" ...	Pan Handle	I. L. Lyon & Sons.
Cleveland, O..	Nickel Plate.....	A. Gregory.
" ...	Do.	O. L. Lyon & Sons.
" ...	Do.	West Am. Fruit Co.
" ...	Do.	So. Cal. Fruit Exchange.

1216

Denver, Colo..	Union Pacific R. R.....	Fay Fruit Co.
" ...	Do.	Redlands O. G. Ass'n.
" ...	Do.	A. Gregory.
" ...	Do.	Redlands Ecl. O. Ass'n.
Des Moines, Ia.	Chicago, R. I. & Pac. Ry..	So. Cal. Fruit Exchange.
" ...	Chicago Great Western Ry.	Ruddock, Trench & Co.
" (Davidson Bros.)	Do.	... Covina O. G. Ass'n.
" (C. C. Taft & Co.)	C. R. I. & P. Ry.....	Ruddock, Trench & Co.

Destination.	Preferred delivery.	When shipped by—
Detroit, Mich.	Grand Trunk railway.....	So. Cal. Fruit Exchange.
" ...	Do.	Fay Fruit Co.
" ...	Michigan Central railway.	I. L. Lyon & Son.
" ...	Do. ...	West Am. Fruit Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Mich. So'n Ry.	A. Gregory.
Galesburg, Ill.	Burlington route.....	I. L. Lyon & Sons.
" ...	Do.	So. Cal. Fruit Exchange.
Grand Island, Neb.	Do.	So. Cal. Fruit Exchange.
Guelph, Ont..	Grand Trunk railway.....	So. Cal. Fruit Exchange.
Hamilton, Ont.	Grand Trunk railway.....	So. Cal. Fruit Exchange.
Hamilton, O..	Pan Handle.....	Ruddock, Trench & Co.
" ...	Pan Handle.....	Earl Fruit Co.
" ...	Pan Handle.....	A. Gregory.
" ...	Pan Handle.....	C. K. Short.
1217		
Hamilton, O.	Pan Handle.....	Fay Fruit Co.
J. Amicon & Bro.		
Indianapolis, Ind.	C. C. C. & St. L. (Big Four)	So. Cal. Fruit Exchange.
Jackson, Mich.	Michigan Central railway.	So. Cal. Fruit Exchange.
Kansas City, Mo.	Missouri, Kansas & Texas Ry.	Fay Fruit Co.
Keene, N. H..	Boston & Maine R. T.....	West Am. Fruit Co.
Kalamazoo, Mich.	Michigan Central Ry.....	West Am. Fruit Co.
Lafayette, Ind. for Pottlittzer Bro.	C. C. C. & St. L. Ry. (Big Four)	So. Cal. Fruit Exchange.
La Salle, Ind.	Burlington route.....	So. Cal. Fruit Exchange.
Lima, O.....	Lake Erie Western Ry.....	Covina O. G. Ass'n.
"	Erie railroad...	Altschul Bros. & Co.
Lincoln, Neb.	Burlington route or C. R. I. & P.	So. Cal. Fruit Exchange.
Louisville, Ky.	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
London, Can..	Michigan Central Ry.....	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
Milwaukee, Wis.	Chicago, Mil. & St. P. Ry..	Fay Fruit Co.
"	... Chicago & Northwestern Ry.	O. L. Lyon & Sons.
Minneapolis, Minn.	Chicago, Mil. & St. P. Ry..	So. Cal. Fruit Exchange.
"	... Do.	... Covina O. G. Ass'n.
"	... C. M. & St. P., or C. St. P. M. & O.	Porter Brothers Co.
" (Kneen & Co)	Chi. St. Paul, M. & O.....	Ruddock, Trench & Co.
1218		
Montreal, Quebec.	Grand Trunk Ry	So. Cal. Fruit Exchange.
New York city.	Erie railroad	So. Cal. Fruit Exchange.
"	... Erie railroad	Covina O. G. Ass'n.
"	... Erie railroad	Fay Fruit Co.
"	... Erie railroad	Porter Brothers Co.
"	... Erie railroad	Ruddock, Trench & Co.
"	... Erie railroad	Earl Fruit Co.
"	... Erie railroad	Redlands O. G. Ass'n.
"	... Erie railroad	O. L. Lyon & Sons.
"	... Baltimore & Ohio R. R....	A. Gregory.
Omaha, Neb..	Union Pacific R. R.....	A. B. Devine.
"	... Do.	So. Cal. Fruit Exchange.
"	... Burlington route.....	Fay Fruit Co.
"	... Do.	Redlands O. G. Ass'n.
Oshkosh, Wis.	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Ottowa, Ont...	Canada Atlantic.....	Ruddock, Trench & Co.
Peoria, Ill.....	Burlington route.....	So. Cal. Fruit Exchange.
Philadelphia, Penn.	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange.
"	... Do.	.... Covina O. G. Ass'n.
"	... Do.	.... Sandiland Brothers.
"	... Pennsylvania lines.....	Fay Fruit Co.
"	... Do.	I. L. Lyon & Sons.
1219	... Lehigh Valley R. R.....	Ruddock, Trench & Co.
Philadelphia, Penn.	Philadelphia & Reading...	Porter Brothers Co.
"	... Do.	... Earl Fruit Co.
"	... Do.	... Redlands Ecl. O. G. Assn.

Destination.	Preferred delivery.	When shipped by—
Syracuse, N. Y.	New York Central and H. R. R. R.	Ruddock, Trench & Co.
Toledo, Ohio.	Lake Shore & Michigan So. Ry.	So. Cal. Fruit Exchange.
Toronto, Can.	Canadian Pacific Ry.	Do.
Utica, N. Y.	Delaware, Lackawanna and W. Ry.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R.	So. Cal. Fruit Exchange.
"	Pennsylvania lines	Earl Fruit Co.
Waterloo, Ia.	Chicago, Great Western Ry.	So. Cal. Fruit Exchange.
Wheeling, W. Va.	Baltimore & Ohio R. R.	Do.
Winona, Minn.	Burlington route	West Am. Fruit Co.
Worcester, Mass.	Fitchburg railway	Do.
Winnipeg, Man.	Northern Pacific railway	I. L. Lyon & Sons.
Youngstown, Ohio.	Baltimore & Ohio R. R.	I. L. Lyon & Sons.

1197 Preferred Deliveries by Switching Service.

Pages 8/9/10 and 11 show shippers' preferred delivering lines in various cities. At points shown below, such preferred deliveries may be effected by switching service. Therefore, to prevent a line receiving more than its allotment, business may be routed via another line and desired *delivery* be given.

Point.	Lines that will perform switching for each other.
Kansas City, Mo.	St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago, Rock Island & Pacific railway.
St. Louis, Mo.	Wabash railroad. St. Louis, Iron Mt. & Southern railway. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago & Alton railway.
Cincinnati, Ohio.	Pennsylvania railroad. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis Ry.

1198 NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 5/6 and 7), or "Deliver-

ing line instructions" (see pages 8/9/10 and 11), must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that company's allotment.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis as the cars move daily to points east of Chicago and St. Louis, and at times to points west thereof, but you are to do the best you can in line with these instructions—which, however, are liable to be changed any time.

When but few cars are shipped, all may be routed one day via one route; via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul

Yours truly,

G. W. LUCE.

N. B.—Acknowledge receipt by return mail.

CC to Mr. Wm. Sproule, F. T. M. San Francisco.
Mr. W. G. Neimyer, G. W. A., Chicago.

1199 (3-16-'01—5M.) 2 TG. 90.

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)
Mc.

Office
Asst. gen. frt. & pass. agent.
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs., but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

In your reply please refer to T. B1–16000.

(Confidential.)

LOS ANGELES, CAL., June 4, 1901.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, California.

Citrus Fruit Routing.

GENTLEMEN: Supplementing my letter to you, file as above, May 27:

Specific Routings.

Minneapolis and Saint Paul shipments:

C. St. P. M. & O.....	67 per cent.
M. & St. L.....	33 per cent.

Give the latter line its percentage chiefly of shipments destined Minneapolis.

1200 Preferred Deliveries.

Minneapolis:
M. & St. L., from Ruddock, Trench & Company.
Ottowa, Canada:
Grand Trunk and Canada Atlantic; shipments for G. W. Hunt and Company.

Yours truly, G. W. LUCE.

C. C. to Wm. Sproule.
W. G. Neimyer.

1201 (3–16–'01—5M.) 2 TG. 90.

Subject:	Office
(Southern Pacific Company, Sunset, Ogden and Shasta routes.) Mc.	Asst. gen. frt. & pass. agent, Pacific system, 261 South Spring street (Douglas building). G. W. Luce, Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs., but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs. exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of car, when space permits.)

In your reply, please refer to A-1-16000

(Confidential.)

LOS ANGELES, CAL., June 19, 1901.

Mr. Chas. Seyler, agent So. Pacific Co., Los Angeles, Cal.
Mr. D. A. Bruce, agent So. Pacific Co., Colton, Cal.

Routing Citrus Fruit Shipments.

GENTLEMEN: Effective at once, please route Rio Grande Western Railway proportion as follows:

Via Denver & Rio Grande R. R..... 85 per cent.
1202 Via Colorado Midland railway..... ..... 15 per cent.

Routing beyond as per my letter of May 27th, file as above.

Yours truly,

G. W. LUCE.
Mc.

CC to Mr. Wm. Sproule, F. T. M., San Francisco, Cal.

(Dictated, G. W. L.)

1203 (3-16-'01—5M.)

2. TG. 90.

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)
Mc.

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs., but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice, except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of car, when space permits.)

In your reply please refer to A–1–16000.

(Important.)

LOS ANGELES, CAL., July 10, 1901.

Mr. Chas. Seyler, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Preferred Delivery, Pittsburgh, Pa., A. C. So. Cal. Fruit Exchange.

GENTLEMEN: Referring to my letter A–1–16000, May 27th, 1901, routing citrus fruit:

Please cancel Baltimore & Ohio as preferred delivery at Pittsburgh, Pa., for the Southern California Fruit Exchange, and substitute therefor the *Pennsylvania Company.*

Yours truly,

G. W. LUCE.
Mc.

CC to Wm. Sproule, F. T. M.
W. G. Neimyer, G. W. A.

1204 (3–16–'01—5M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)
Mc.

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. W. Luce,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs. exceptions noted, and are subject to change without notice, except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of car, when space permits.)

In your reply please refer to A–1–16000.

(Confidential.)

LOS ANGELES, CAL., July 29, 1901.

Mr. Chas. Seyler, agent, So. Pacific Co., Los Angeles, Cal.
Mr. D. A. Bruce, agent, So. Pacific Co., Colton, Cal.

Routing Citrus Fruit Shipments.

GENTLEMEN: Referring to my letter of May 27th, A–1–1600–, above subject.

Effective at once, amend "specific routings" as follows:

1205 Minneapolis shipments, route :

Via Ogden, Union Pacific R. R. and Chicago, St. Paul, Minneapolis & Omaha Ry..... 50 per cent.
Via Ogden, Union Pacific R. R. and Willmar & Sioux Falls Ry. at Sioux City. ..... 50 per cent.

St. Paul shipments, route :

Via Ogden, Union Pacific R. R. and Chicago, St. Paul, Minneapolis & Omaha Ry..... 50 per cent.
Via Ogden, Union Pacific R. R. and Willmar & Sioux Falls Ry. at Sioux City .... 50 per cent.

Also please observe following preferred delivery: Pittsburgh, Pa., shipments, when shipped by the Southern California Fruit Exchange, route via Pennsylvania Company.

Yours truly,

G. W. LUCE.

CC to Mr. Wm. Sproule ;
Mr. W. G. Neimyer.

1206 Q. Have you the routing instructions for the next year?
A. Yes, sir. (Witness hands document to counsel.)

Mr. CALL: I also offer the several letters embraced in one file, commencing with the date, November 14, 1901, and ending May 3rd, 1902, and marked Complainant's Exhibit 40.

The document last offered is as follows:

1207 (9-27-'00—5M.)

2 TG. 90.

Subject:
(Southern Pacific Company
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. A. Parkyns,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

CPW

Cincinnati, O., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four.)

1229 Columbus, O., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Duluth shipments, route:
Via the Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

Fargo, S. D., shipments route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry., at St. Paul.

Fort Dodge, Ia., shipments, route:
Via Union Pacific R. R. to Council Bluffs, thence via the Illinois Central railroad.

Grand Forks, N. D., shipments, route:
Via the Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry.

Indianapolis, Ind., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four) through St. Louis.

Lafayette, Ind., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Louisville, Ky., shipments, route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Minneapolis shipments, route:
Via Ogden, Union Pacific railroad and Chicago, St. Paul, Minneapolis & Omaha Ry.

Nashville, Tenn., shipments, route:
Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.

New York city shipments, route:
Via the Erie railroad from Buffalo.

1230 Philadelphia shipments route:
Via Pennsylvania lines ..... 100 per cent.
B. & O. R. R., and B. & O. S. W. Ry. will receive their proportion as shown under heading "Preferred deliveries."

Pittsburgh shipments, route:
Via the Pennsylvania lines.

Salt Lake City, Utah, shipments route:
Via Oregon Short Line..... 50 per cent.
Via Rio Grande Western R. R..... 50 per cent.

Sioux City, Ia., shipments, route:
Via the Union Pacific railroad.

St. Paul shipments route:
Via Ogden, Union Pacific railroad and Chicago, St. Paul, Minneapolis & Omaha railway.

Troy, N. Y., shipments route:
From Buffalo, via New York Central & Hudson River R. R.
Vancouver, B. C., shipments route:
From Tacoma, via Western Steam Navigation Co.'s steamers "North Pacific" or "Mainlander."
Wichita, Kan., shipments route:
Via Chicago, Rock Island & Pacific Ry., at Ft. Worth, Tex.
Winnipeg shipments route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha railway, care Northern Pacific Ry at St. Paul.

On business moving through New Orleans, to points shown below, routing is indicated must be observed:

Atlanta, Ga.:
Va Louisville & Nashville R. R., Western Ry. of Alabama, and Atlanta & West Point R. R.
1231 Asheville, N. C. Via New Orleans & Northeastern Ry. and Alabama Great Southern railway.
Charleston, S. C. Via Louisville & Nashville R. R., Georgia railroad.
Jacksonville, Fla. Via Louisville & Nashville R. R. and Plant system.
Macon, Ga. Via Louisville & Nashville R. R., Western Ry. of Alabama and Central of Georgia railway.
Mobile, Ala. Via Louisville & Nashville R. R.
Montgomery, Ala. Via Louisville & Nashville R. R.
Savannah, Ga. Via Louisville & Nashville R. R. and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line or lines, as shown, *must be used.*

Destination.	Preferred delivery.	When shipped by—
Austin, Tex...	Internat'l & Gt. Northern R. R.	So. Cal. Fruit Exchange.
Albany, N. Y.	Delaware & Hudson Co...	Earl Fruit Co.
Aberdeen, S. D.	Chicago, Mil. & St. Paul Ry.	Porter Bros. Co.
Aberdeen, Ind. for Moulton & Ridel.	C. C. C. & St. L. (Big Four)	So. Cal. Fruit Exchange.
Atlanta, Ga...	Southern railway.....	So. Cal. Fruit Exchange.
Baltimore, Md.	Pennsylvania lines.....	Earl Fruit Co.
" ...	Baltimore & Ohio R. R...	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
1132		
Baltimore, Md.	Baltimore & Ohio R. R...	Fay Fruit Co.
Do. ...	Do. ...	A. Gregory.
Birmingham, Ala.	Southern railway.....	So. Cal. Fruit Exchange.
Boston, Mass.	Fitchburg railway.....	A. Gregory.
Do. ...	Do.	West Am. Fruit Co.
Do. ...	Do.	I. L. Lyon & Sons.
Do. ...	Do.	So. Cal. Fruit Exchange.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Fitch. and Boston & Maine	Redlands O. G. Ass'n.
Buffalo, N. Y.	Wabash Ry. or Lake Shore & M. S.	So. Cal. Fruit Exchange.
Do. ...	Lake Shore & Mich. So'n Ry.	Fay Fruit Co.
Do. G. B. Long & Co.	Do. ...	All shippers.
Canadian points.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.
(Also see Canadian points specifically mentioned herein alphabetically.		
Chattanooga, Tenn.	Southern Ry.....	So. Cal. Fruit Exchange.
Chicago, Ills..	Chicago, Mil. & St. Paul Ry. or Chicago & Northwestern Ry.....	Earl Fruit Co.
Do. ...	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
Do. ...	Do. ...	Fay Fruit Co.
Do. ...	Ill. Centl.; Chi. & N. W. R. R., or C. M. & St. Paul R7.	Ruddock, Trench & Co.
Do. ...	Chicago & Northwestern Ry.	Porter Brothers Co.
Do. ...	Illinois Central R. R.....	Redlands Ecl. O. Ass'n.
1233		
Cincinnati, O.	Pennsylvania R. R.....	So. Cal. Fruit Exchange.
Do. ...	C. C. C. & St. L. (Big Four)	Fay Fruit Co.
Do. ...	Pennsylvania railroad.....	Earl Fruit Co.
Do. ...	Do.	Ruddock, Trench & Co.
Hammer & Co. Cincinnati.....	Baltimore & Ohio R. R.....	A. Gregory.

Destination.	Preferred delivery.	When shipped by—
Columbus, O.	Pennsylvania lines.....	A. Gregory.
Do. ...	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
Do. ...	Pan Handle.....	I. L. Lyon & Sons.
Cleveland, O.	Nickle Plate.....	A. Gregory.
Do. ...	Do.	I. L. Lyon & Sons.
Do. ...	Do.	West. Am. Fruit Co.
Do. ...	Do.	So. Cal. Fruit Exchange.
Denver, Colo.	Union Pacific R. R.....	Fay Fruit Co.
Do. ...	Do.	Redlands O. G. Ass'n.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	Redlands Ecl. O. G. Assn.
Des Moines, Ia.	Chicago, R. I. & Pac. Ry...	So. Cal. Fruit Exchange.
Do. ...	Chicago Great Western Ry.	Ruddock, Trench & Co.
" (Davidson Bros.)	Do. ...	Covina O. G. Ass'n.
" (C. C. Taft & Co.)	C. R. I. & P. Ry.....	Ruddock, Trench & Co.
Detroit, Mich.	Grand Trunk railway or Michigan Central Ry.	So. Cal. Fruit Exchange.
Do. ...	Grand Trunk Ry.....	Fay Fruit Co.
Do. ...	Michigan Central Ry.....	I. L. Lyon & Sons.
1234		
Detroit, Mich..	Michigan Central Ry.. ..	West. Am. Fruit Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Mich. S'n Ry.	A. Gregory.
Fort Wayne, Ind.	Wabash Ry.....	A. Gregory.
Galesburg, Ill.	Burlington route.....	I. L. Lyon & Sons.
Do. ...	Do.	So. Cal. Fruit Exchange.
Grand Island, Neb.	Do.	So. Cal. Fruit Exchange.
Guelph, Ont..	Grand Trunk Ry.....	So. Cal. Fruit Exchange.
Hamilton, Ont.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.
Hamilton, O..	Pan Handle.....	Ruddock, Trench & Co.
Do. ...	Do.	Earl Fruit Co.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	C. K. Short.
Do. (J. Amicon & Bro.)	Do.	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L. (Big Four) or Vandalia.	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
Jackson, Mich.	Michigan Central Ry.....	So. Cal. Fruit Exchange.
Kansas City, Mo.	Missouri, Kansas & Texas Ry.	Fay Fruit Co.
Keene, N. H..	Boston & Maine R. R.....	West. Am. Fruit Co.
Kalamazoo, Mich.	Michigan Central Ry.....	West. Am. Fruit Co.
Lafayette, Ind.	Wabash Ry	A. Gregory.
Do.	for C. C. C. & St. *D* (Big Four)	So. Cal. Fruit Exchange.
Pottlitzner Bro.		

1235

La Salle, Ind.	Burlington route....	So. Cal. Fruit Exchange.
Lima, O	Lake Erie Western Ry.....	Covina O. G. Ass'n.
Do. ..	Erie railroad	Altschul Bros. & Co.
Lincoln, Neb.	Burlington route or C. R. I. & P.	So. Cal. Fruit Exchange.
Louisville, Ky.	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
London, Canada.	Michigan Central Ry.....	So. Cal. Fruit Exchange.
Milwaukee, Wis.	Chicago, Mil. & St. Paul Ry.	Fay Fruit Co.
Do. ...	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Do. ...	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
Minneapolis, Minn.	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange.
Do. ...	Do.	... Covina O. G. Ass'n.
Do. ...	C. M. & St. P., or C. St. P. M. & O.	Porter Brothers Co.
" (Kneen & Co.)	Chicago, St. Paul M. & O..	Ruddock, Trench & Co.
Montreal, Quebec.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.
New York city.	Erie railroad.....	So. Cal. Fruit Exchange.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Do.	Porter Brothers Co.
Do. ...	Do.	Ruddock, Trench & Co.
Do. ...	Do.	Earl Fruit Co.
Do. ...	Do.	Redlands O. G. Ass'n.
Do. ...	Do.	

1236

Destination.	Preferred delivery.	When shipped by—
New York city.	Erie railroad	I. L. Lyon & Sons.
Do. ...	Baltimore & Ohio R. R.....	A. Gregory.
Do. ...	Do.	A. B. Devine.
" Westfall Fruit Co.	Do.	A. G. Stearns.
Omaha, Neb..	Un. Pac. R. R., C. R. I. & P. or B. & M. R. R. R...	So. Cal. Fruit Exchange.
Do. ...	Do. ...	Fay Fruit Co.
Do. ...	Burlington route.....	Redlands O. G. Ass'n.
Do. ...	Do.	I. L. Lyon & Sons.
Oshkosh, Wis.	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Ottowa, Ont...	Canada Atlantic.....	Ruddock, Trench & Co.
Peoria, Ills...	Burlington route.....	So. Cal. Fruit Exchange.
Philadelphia, Penn.	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Sandiland Brothers.
Do. ...	Pennsylvania lines.....	Fay Fruit Co.
Do. ...	Do.	I. L. Lyon & Sons.
Do. ...	Lehigh Valley R. R.....	Ruddock, Trench & Co.
Do. ...	Philadelphia & Reading...	Porter Brothers Co.
Do. ...	Do. ...	Earl Fruit Co.
Do. ...	Do. ...	Redlands Ecl. O. G. Assn.
Pittsburgh, Penn.	Pennsylvania Company...	So. Cal. Fruit Exchange.
Do. ...	Pennsylvania lines.....	Earl Fruit Co.
Do. ...	Do.	Fay Fruit Co.

1237

Pittsburgh, Penn.	Pennsylvania lines.....	Ruddock, Trench & Co.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	Moulton & Greene.
Do. ...	Do.	Sandiland Brothers.
Do. ...	Do.	Sparr Fruit Co.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Salisbury Fruit Co.
Do. ...	Do.	F. H. Edwards.
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.
Do. ...	Lehigh Valley R. R.....	Earl Fruit Co.
Scranton, Penn.	Delaware, Lackawanna & West'n.	So. Cal. Fruit Exchange.
Sioux City, Ia.	Union Pacific R. R.....	So. Cal. Fruit Exchange

Destination.	Preferred delivery.	When shipped by—
Springfield, Mass.	Boston & Albany R. R.	Earl Fruit Co.
" (H. J. Perkins.)	Do.	... Walter S. Newhall.
"	... N. Y., N. H. & H. R. R.	San Antonio Fruit Exc.
St. Louis, Mo.	St. Louis & San Francisco R. R.	Ruddock, Trench & Co.
Do.	... Mo. Pac. R. R. or C. M. & St. P. Ry.	So. Cal. Fruit Exchange.
Do.	... Burlington route or M. K. & T.	Fay Fruit Co.
St. Paul, Minn.	Chicago, Milwaukee & St. Paul.	So. Cal. Fruit Exchange.
Do.	... C. St. P. M. & O. or C. M. & St. P.	Porter Brothers Co.
Do.	... C. St. P. M. & O. R. R.	Fay Fruit Co.
" (Kneen & Co.)	Do.	Ruddock, Trench & Co.

1238

Syracuse, N. Y.	New York Central & H. R. R. R.	Ruddock, Trench & Co.
Toledo, O.	Lake Shore & Mich. Southern Ry.	So. Cal. Fruit Exchange.
Toronto, Canada.	Canadian Pacific Ry.	So. Cal. Fruit Exchange.
Do.	... Grand Trunk Ry.	Redlands Orange Co.
Utica, N. Y.	Delaware, Lackawanna & W. Ry.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R.	So. Cal. Fruit Exchange.
Do.	... Pennsylvania lines	Earl Fruit Co.
Waterloo, Ia.	Chicago Great Western Ry.	So. Cal. Fruit Exchange.
Wheeling, W. Va.	Baltimore & Ohio R. R.	So. Cal. Fruit Exchange.
Winona, Minn.	Burlington route	West Am. Fruit Co.
Worcester, Mass.	Fitchburg Ry.	West Am. Fruit Co.
Winnipeg, Manitoba.	Northern Pacific Ry.	I. L. Lyon & Sons.
Youngstown, Ohio.	Baltimore & Ohio R. R.	I. L. Lyon & Sons.

Preferred Deliveries by Switching Service.

Pages 7, 8, 9, and 10, show shippers' PREFERRED DELIVERING LINES in various cities. At points shown below such preferred deliveries may be effected by switching service; therefore, to prevent a line receiving more than its allotment, business may be routed via another line and desired DELIVERY be given.

1239

Point.	Lines that will perform switching for each other.
Kansas City, Mo...	St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago, Rock Island & Pacific railway.
St. Louis, Mo.....	Wabash railroad. St. Louis, Iron Mountain & Southern railway. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago & Alton railway.
Cincinnati, Ohio ..	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis railway.
Buffalo, N. Y.....	Grand Trunk railway. Lake Shore & Michigan Southern railway. Michigan Central railway. New York, Chicago & St. Louis railway. (New York Central & Hudson River R. R. performs all switching service for the three lines last named. Hence, those lines have no deliveries in Buffalo, excepting in the New York Central's freight depot or team track. Lines therefore performing switching would be the N Y C & H R R R and the Grand Trunk Ry.)

1240 NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 4 5 and 6) or "Delivering line instructions" (see pages 7, 8, 9, and 10) must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the best you can in line with these instructions,—which, however, are liable to be changed at any time.

Destination.	Preferred delivery.	When shipped by—
Pittsburgh, Penn.	Pennsylvania Company...	So. Cal. Fruit Exchange.
" ...	Pennsylvania lines.....	Earl Fruit Co.
" ...	Do.	Fay Fruit Co.
" ...	Do.	Ruddock, Trench & Co.
" ...	Do.	A. Gregory.
" ...	Do.	Moulton & Greene.
" ...	Pennsylvania lines.....	Sandiland Brothers.
" ...	Do.	Sparr Fruit Co.
" ...	Do.	Covina O. G. Ass'n.
" ...	Do.	Salisbury Fruit Co.
" ...	Do.	F. H. Edwards.
" ...	Do.	Fay Fruit Co.
Rochester, N. Y.	West Shore Ry.....	Earl Fruit Co.
"	Lehigh Valley R. R.....	So. Cal. Fruit Exchange.
Scranton, Penn.	Delaware, Lackawanna & West'n	So. Cal. Fruit Exchange.
Sioux City, Ia.	Union Pacific R. R.....	Earl Fruit Co.
Springfield, Mass.	Boston & Albany R. R.....	Walter S. Newhall.
" (H. J. Perkins).	Do.	San Antonio Fruit Exc.
"	N. Y. N. H. & N. R. R.....	Ruddock, Trench & Co.
St. Louis, Mo..	St. Louis & San Francisco R. R.	So. Cal. Fruit Exchange.
"	Burlington route.....	

1220

St. Louis, Mo.	Burlington route or M. K. & T.	Fay Fruit Co.
St. Paul, Minn.	Chicago, Milwaukee & St. Paul.	So. Cal. Fruit Exchange
" ...	C. St. P. M. & O. or C. M. & St. P.	Porter Brothers Co.
" ...	C. St. P. M. & O. R. R.....	Fay Fruit Co.
" (Kneen & Co)	Do.	Ruddock, Trench & Co.
Syracuse, N. Y.	New York Cent'l & H. R. R.	Ruddock, Trench & Co.
Toledo, O.....	Lake Shore & Michigan So'n Ry.	So. Cal. Fruit Exchange
Toronto, Can.	Canadian Pacific Ry.....	So. Cal. Fruit Exchange
Utica, N. Y...	Delaware, Lackawanna & W. Ry.	Earl Fruit Co.
Washington, D. C.	Baltimore & Ohio R. R....	So. Cal. Fruit Exchange
" ...	Pennsylvania lines	Earl Fruit Co.

Destination.	Preferred delivery.	When shipped by—
Waterloo, Ia..	Chicago Great Western Ry.	So. Cal. Fruit Exchange
Wheeling, W. Va.	Baltimore & Ohio R. R ...	So. Cal. Fruit Exchange
Winona, Minn.	Burlington route.....	West Am. Fruit Co.
Worcester, Mass.	Fitchburg Ry	West Am. Fruit Co.
Winnipeg, Manitoba,	Northern Pacific Ry	I. L. Lyon & Sons.
Youngstown, O.	Baltimore & Ohio R. R ...	I. L. Lyon & Sons.

1221 Preferred Deliveries by Switching Service.

Pages 7, 8, 9, and 10 show shippers' preferred delivering lines in various cities. At points shown below such preferred deliveries may be effected by switching service; therefore, to prevent a line receiving more than its allotment, business may be routed via another line and desired *delivery* be given.

Point.	Lines that will perform switching for each other.
Kansas City, Mo	St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago, Rock Island & Pacific railway.
St. Louis, Mo	Wabash railroad. St. Louis, Iron Mountain & Southern railway. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago & Alton railway.
Cincinnati, Ohio.....	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis Ry.
Buffalo, N. Y	Grand Trunk railway. Lake Shore & Michigan Southern railway. Michigan Central railway. New York, Chicago & St. Louis railway. (New York Central & Hudson River R.R. perform all switching service for the three lines last named. Hence those lines have no deliveries in Buffalo excepting in the New York Central's freight depot or team track. Lines therefore performing switching would be the N. Y. C. & H. R. R. R. and the Grand Trunk Ry.)

1222

NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 4, 5, and 6,) or "Delivering line instructions" (see pages 7, 8, 9, and 10), must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis as the cars move daily to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the best you can in line with these instructions—which however are liable to be changed at any time.

When but few cars are shipped, all may be routed one day via one route via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competi-
1223 tive points, on some particular line, should be routed via that line but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly,

(Signed) G. A. PARKYNS.

N. B.—*Acknowledge receipt by return mail.*

C. C. Mr. Wm. Sproule, F. T. M., San Francisco.
Mr. W. G. Neimyer, G. A., Chicago, Ills.

2 TG. 90.

1224 (2-17-'00—2M.)

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. A. Parkyns,
Asst. gen. frt. & pass. agt.

(Interstate rates are subject to provisions of interstate commerce law.

Unless otherwise agreed, all local rates are subject to change without further notice.

Most of this company's freight cars are built to carry twenty to thirty tons weight. Never load less than 12 tons. If shippers load to weight capacity, which is plainly marked on sides of car, it will do much to obviate delay in furnishing cars for loading and prevent detention in transit. Do not load to exceed weight capacity.)

CPW

In your reply please refer to A 2–13259.

(Confidential.)

NOTE.—*This letter cancels all previous routing and delivering line instructions.*

LOS ANGELES, CAL., January 31st, 1902.

Mr. W. S. Pollock, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Trans-continental Freight Bu-
1225 reau east-bound special tariff No. S. R. 267, effective February 1st, 1901, announcing:

"In guaranteeing the through rate named herein, the absolute" "and unqualified right of routing beyond its own terminal is re-" "served to initial carrier giving guarantee."

Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon. Agents will, therefore, not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates changes therein.

You will, therefore, commencing February 1st, 1902, please route Trans-continental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the *the* following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railroad.
Texas & Pacific railway.
Southern Pacific Co. (Atlantic system, including New Orleans).

1226 The remainder, route:

Via El Paso	90 per cent.
Via Ogden	10 per cent.

Business via El Paso, route:

Via Texas & Pacific Ry	100 per cent.

Texas & Pacific railway business, route:

From Texarkana, Tex., via St. L. I. Mt. & Southern Ry. to St. Louis	30 per cent.
From Paris, Tex., via St. Louis & San Francisco R. R. to St. Louis	25 per cent.

From Ft. Worth, Tex., via C. R. I. & T. Ry. and C. R. I. & P. Ry. to Kansas City..... 30 per cent.
From Ft. Worth, Tex., via Missouri, Kansas & Texas Ry..... 15 per cent.

Chicago, Rock Island & Pacific Ry. proportion, route from Kansas City:

Via Chicago, Milwaukee & St. Paul Ry..... 30 per cent.
Via Chicago, Great Western Ry..... 20 per cent.
Via Chicago, Rock Island & Pacific Ry..... 50 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined to Chicago only.)

Missouri, Kansas & Texas Ry. proportion, route:

Via Kansas City.. ..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion, via Kansas City, route:

Via Chicago, Milwaukee & St. Paul Ry..... .... 50 per cent.
Via Chicago Great Western Ry..... 25 per cent.
Via Chicago & Alton Ry..... 25 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined Chicago only.)

1227 Missouri, Kansas & Texas Ry. proportion, via St. Louis, to or via Chicago, route:

Via Wabash railroad..... ..... 70 per cent.
Via Chicago & Alton Ry..... ..... 30 per cent.

St. Louis, Iron Mountain & Southern Ry., and St. Louis & San Francisco Ry. proportion via St. Louis to Chicago, route:

Via Wabash railroad ..... 70 per cent.
Via Chicago & Alton Ry..... 30 per cent.

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan Southern Ry. (to Buffalo) ..... 15 per cent.
Via Michigan Central Ry. (to Buffalo)..... 20 per cent.
Via New York, Chicago & St. Louis Ry. (to Buffalo) ..... 20 per cent.
Via Grand Trunk Ry. (to Buffalo)..... 10 per cent.
Via Pennsylvania lines .... 15 per cent.
Via Baltimore & Ohio Ry..... 15 per cent.
Via Grand Trunk Ry. (Long haul)..... 5 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R...	30 per cent.
Via West Shore railway.....	30 per cent.
Via Delaware, Lackawanna & Western R. R.....	20 per cent.
Via Lehigh Valley railroad.....	20 per cent.

Business via St. Louis to points east thereof (except Chicago,) route:

Via Wabash railroad..... (New York business via Wabash R. R., route Erie R. R..... Boston busness via Wabash R. R. route via Canadian Pacific R. R., care Boston & Maine R. R., Newport, Me. Fitchburg delivery.....)	20 per cent.
Via Pennsylvania lines	20 per cent.
Via Baltimore & Ohio Southwestern Ry.....	25 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four) connections for New York business are Lake Shore & Michigan Southern, and Erie railroads.....	35 per cent.

Business via Ogden, route:
Colorado common points business route:

Via Union Pacific R. R.....	50 per cent.
Via Rio Grande Western R. R.....	50 per cent.

Rio Grande Western R. R. proportion, route:

Via Colorado Midland Ry.....	50 per cent.
Via Denver & Rio Grande R. R.....	50 per cent.

NOTE.—It is expected that specific routings (see pages 4 and 5) will give to the Ogden route its full proportion of..... ..... 10 per cent.

Specific Routings.

Atlanta, Ga., shipments, route:
Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.
Baltimore shipments, route:

Via Baltimore & Ohio railroad, when via Chicago.....	66⅔ per cent.
Via Pennsylvania lines	33⅓ per cent.

Boston shipments route:
In care Boston & Maine Ry. (Fitchburg division) at Rotterdam Junction, Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry., at Newport.
When via the Wabash railroad, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

When but few cars are shipped, all may be routed one day via one route, via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly,

(Signed) G. A. PARKYNS.

N. B.—*Acknowledge receipt by return mail.*

CC Mr. Wm. Sproule, San Francisco.
Mr. W. G. Neimyer, G. W. A., Chicago, Ills.

1241 CPW
A-1-13259.

So. Pac. Co.
Freight Office.
Los Angeles,
Dec. 17, 1901.

(Confidential.)

LOS ANGELES, December 16th, 1901.

Mr. W. S. Pollock, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to my confidential letter of November 14th, on above subject:

Please make the following additions and alterations to same:

On page 3, strike out lines 6, 7, 8, 9, 10, and 11, being distribution of "business destined east of Chicago," and insert in lieu thereof following roads and percentages:

Via Lake Shore & Michigan Southern Ry. (to Buffalo).....	15 per cent.
Via Michigan Central Ry (do.).....	20 per cent.
Via New York & Chicago and St. Louis Ry. (do.)..	20 per cent.
Via Grand Trunk Ry. (do.).....	10 per cent.
Via Pennsylvania lines.....	15 per cent.
Via Baltimore & Ohio Ry.....	15 per cent.
Via Grand Trunk Ry. (long haul).....	5 per cent.

At the bottom of page 3 add the following; following the routing of business via Ogden:

Salt Lake City, Utah, business, route:

Via Oregon Short Line.....	50 per cent.
Via Rio Grande Western R. R.....	50 per cent.

1242 Colorado common points, route:

Via Union Pacific railroad	50 per cent.
Via Rio Grande Western railroad	50 per cent.

Rio Grande Western R. R., proportion, route:

Via Colorado Midland Ry	50 per cent.
Via Denver & Rio Grande R. R.	50 per cent.

Make the following additions and changes in

Preferred Delivering Lines.

It will be observed that, in the following list, the Southern California Fruit Exchange have added another line at certain points, such as Detroit, where they have added "or Michigan Central" so that their preferred delivery at that point is either Grand Trunk or Michigan Central.

Destination.	Preferred delivery.	When shipped by—
Austin, Tex...	Internat'l & Gt. Northern R. R.	So. Cal. Fruit Exchange.
Buffalo, N. Y..	Wabash Ry. or Lake Shore & M. S.	So. Cal. Fruit Exchange.
Chicago, Ill...	Illinois Central, Chicago & Northwestern R. R. or C. M. & St. Paul Ry.	Ruddock, Trench & Co.
Detroit, Mich.	Grand Trunk or Mich. Central.	So. Cal. Fruit Exchange.
Ft. Wayne, Ind.	Wabash Ry.....	A. Gregory.
Indianapolis, Ind.	C. C. C. & St. L. (Big 4) or Vandalia.	So. Cal. Fruit Exchange.
Layfayette, Ind.	Wabash Ry...	A. Gregory.
Milwaukee, Wis.	Chicago Milwaukee & St. Paul.	So. Cal. Fruit Exchange

1243

Omaha, Neb..	Union Pacific R. R. Rock Island & St. Paul Ry. or Burlington & Missouri River.	So. Cal. Fruit Exchange
St. Louis, Mo..	Missouri Pacific R. R. or Chicago, Milwaukee & St. Paul.	So. Cal. Fruit Exchange

Please acknowledge receipt by return mail.

(Signed) G. A. PARKYNS.

CC Mr. Wm. Sproule.
Mr. W. G. Neimyer.

1244 (2-17-'00—2M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. A. Parkyns,
Asst. gen. frt. & pass. agt.

(Interstate rates are subject to provisions of interstate commerce law.

Unless otherwise agreed, all local rates are subject to change without further notice.

Most of this company's freight cars are built to carry twenty to thirty tons weight. Never load less than 12 tons. If shippers load to weight capacity, which is plainly marked on sides of car, it will do much to obviate delay in furnishing cars for loading and prevent detention in transit. Do not load to exceed weight capacity.)
CPW.

In your reply, please refer to A 2-13259.

(Personal.)

Los Angeles, Cal., April 2nd, 1902.

Mr. W. S. Pollock, agent, Los Angeles.
Mr. D. A. Bruce, agent, Colton.

Routing of Citrus Fruit Shipments South of Mojave.

Gentlemen: Referring to my letter March 13th on above subject: Effective immediately please make the following changes in instructions therein contained:

On page 4, strike out lines 2 and 3, reading:

"Via Rio Grande Western railway..... 70 per cent."
"Via Union Pacific system..... 30 per cent."

and in lieu thereof insert the following:

1245 Via Rio Grande Western railway..... 50 per cent.
Via Union Pacific system..... 50 per cent.

On page 5, strike out the routing of business for Grand Forks, N. D., and insert in lieu thereof:

Via Northern Pacific R. R..... 50 per cent.
Via Great Northern Ry..... 50 per cent.

Yours truly,
(Signed) G. A. PARKYNS.

Please acknowledge receipt promptly.

CC Mr. Wm. Sproule.
Mr. W. G. Neimyer

1246 · (3-16-'01—5M.) 2 TG. 90.

Subject:
(Southern Pacific Company,
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. A. Parkyns,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated: when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

CPW

In your reply, please refer to A 2-13259.

Confidential.

LOS ANGELES, CAL., March 29th, 1902.

Mr. W. S. Pollock, agent, Los Angeles.
Mr. D. A. Bruce, agent, Colton.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Effective April 1st, 1902, please make the following changes in my letter of March 13th, containing instructions relative to routing of citrus fruit shipments south of Mojave:

On page 2, strike out lines 6, 7, and 8, which show division of the business 90 per cent. via El Paso and 10 per cent. via Ogden,
1247 and insert in lieu thereof:

"The remainder route:

"Via Ogden..... 90 per cent.
"Via El Paso..... 10 per cent."

On page 6, following the specification of routing on shipments destined St. Paul, insert:

"St. Joe, Mo., shipments route:

"Via the Union Pacific Ry. and St. Joe & Grand Island Ry..... 50 per cent.
"Via the C. R. I. & P. Ry. and St. Joe & Grand Island Ry..... 50 per cent."

Please acknowledge receipt hereof promptly, obliging,

Yours truly,
(Signed) G. A. PARKYNS.

CC Mr. Wm. Sproule.
Mr. W. G. Neimyer.

1248 (3-16-'01—5M.) 2. TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system.
261 South Spring street,
(Douglas building.)
G. A. Parkyns,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 per cent. above weight capacity marked on sides of cars when space permits.)

CPW

In your reply, please refer to A2-13259.

Confidential.

NOTE.—*This letter cancels all previous routing and delivering line instructions.*

LOS ANGELES, CAL., March 13th, 1902.

Mr. W. S. Pollock, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 267, effective February 1st, 1901, announcing:

"In guaranteeing the through rate named herein, the"
1249 "absolute and unqualified right of routing beyond its own"
"terminal is reserved to initial carrier giving guarantee."

Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon. Agents will, therefore, not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates change therein.

You will, therefore, commencing March 14th, 1902, please route Trans-continental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railroad.
Texas & Pacific railway.

Southern Pacific Co. (Atlantic system, including New Orleans).

The remainder route:

Via El Paso..... 10 per cent.
Via Ogden ..... 90 per cent.

Business via El Paso, route:

Via Texas & Pacific Ry..... 100 per cent.

1250 Texas & Pacific Railway business route:

From Texarkana, Tex., via St. L. I. M. & Southern Ry. to St. Louis..... 30 per cent.
From Paris, Tex., via St. Louis & San Francisco R. R. to St. Louis..... 25 per cent.
From Ft. Worth, Texas, via C. R. I. & T. Ry. and C. R. I. & P. to Kansas City..... 30 per cent.
From Ft. Worth, Tex., via Missouri, Kansas & Texas Ry..... 15 per cent.

Chicago, Rock Island & Pacific Ry. proportion route from Kansas City.

Via Chicago, Milwaukee & St. Paul Ry..... 30 per cent.
Via Chicago Great Western Ry..... 20 per cent.
Via Chicago, Rock Island & Pacific Ry..... 50 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment as nearly as can be, of business destined to Chicago only.)

Missouri, Kansas & Texas Ry. proportion route:

Via Kansas City..... 70 per cent.
Via St. Louis..... 30 per cent.

Missouri, Kansas & Texas Ry. proportion via Kansas City, route:

Via Chicago, Milwaukee & St. Paul Ry..... 50 per cent.
Via Chicago Great Western Ry..... 25 per cent.
Via Chicago & Alton Ry.. ..... 25 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined Chicago only.)

Missouri, Kansas & Texas Ry. proportion, via St. Louis to or via Chicago route:

Via Wabash railroad..... 70 per cent.
Via Chicago & Alton Ry..... 30 per cent.

1251 St. Louis, Iron Mountain & Southern Ry. and St. Louis & San Francisco Ry. proportion via St. Louis to Chicago, route:

Via Wabash railroad	70 per cent.
Via Chicago & Alton Ry	30 per cent.

Business destined east of Chicago, route from Chicago:

Via Lake Shore & Michigan Southern Ry. (to Buffalo)	15 per cent.
Via Michigan Central Ry. (to Buffalo)	20 per cent.
Via New York, Chicago & St. Louis Ry. (to Buffalo)	20 per cent.
Via Grand Trunk Ry. (to Buffalo)	10 per cent.
Via Pennsylvania lines	15 per cent.
Via Baltimore & Ohio Ry	15 per cent.
Via Grand Trunk Ry. (long haul)	5 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R.	30 per cent.
Via West Shore railway	30 per cent.
Via Delaware, Lackawanna & Western R. R.	20 per cent.
Via Lehigh Valley railroad	20 per cent.

Business via St. Louis to points east thereof (except Chicago) route:

Via Wabash railroad New York business via Wabash R. R., route via Erie R. R.	20 per cent.
Boston business via Wabash R. R. route via Canadian Pacific R. R. care Boston & Maine R. R., Newport, Me. Fitchburg delivery	
Via Pennsylvania lines	20 per cent.
Via Baltimore & Ohio Southwestern Ry	25 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four) connections for New York business are Lake Shore & Michigan Southern and Erie railroads	35 per cent.

1252 Business via Ogden, route:

Via Rio Grande Western railway	70 per cent.
Via Union Pacific system	30 per cent.

NOTE.—As the Union Pacific Ry. have at present received takings in excess of above allotment, it is desired that Rio Grande Western Ry. be given a sufficiently increased percentage to make their takings conform to their allotment of the whole.

Rio Grande Western Ry. proportion, route (excepting Chicago business, routing for which see note below).

Via Denver & Rio Grande R. R., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.	70 per cent.
Via Colorado Midland railway, and Chicago, Rock Island and Pacific railway	30 per cent.

NOTE.—Chicago business route from Missouri river:

Via Chicago & Northwestern Ry	80 per cent.
Via Chicago, Milwaukee & St. Paul Ry	20 per cent.

Union Pacific system business, route:

Via Illinois Central railroad	60 per cent.
Via Chicago & Northwestern Ry	40 per cent.

Business destined east of Chicago route from Chicago:

Via Lake Shore & Michigan Southern Ry. (to Buffalo)	15 per cent.
Via Michigan Central railway ....do...	20 per cent.
Via New York, Chicago & St. Louis railway..do...	20 per cent.
Via Grand Trunk railway ....do...	10 per cent.
Via Pennsylvania lines	15 per cent.
Via Baltimore & Ohio railroad	15 per cent.
Via Grand Trunk railway (long haul)	5 per cent.

1253 Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River railroad	30 per cent.
Via West Shore railway	30 per cent.
Via Delaware, Lackawanna & Western railroad	20 per cent.
Via Lehigh Valley railroad	20 per cent.

Colorado common points business route:

Via Union Pacific railroad	50 per cent.
Via Rio Grande Western railroad	50 per cent.

Rio Grande Western Railroad proportion route:

Via Colorado Midland Ry	50 per cent.
Via Denver & Rio Grande railroad	50 per cent.

NOTE.—It is expected that specific routings (see pages 5, 6, and 7) will give to the Ogden route its full proportion of 10 per cent.

Specific Routings.

Atlanta, Ga., shipments route:

Care, the Nashville, Chattanooga & St. Louis Ry. at Memphis.

Baltimore shipments route:

Via Baltimore & Ohio railroad, when via Chicago	66⅔ per cent.
Via Pennsylvania lines	33⅓ per cent.

Boston shipments route:

In care Boston & Maine Ry. (Fitchburg division,) at Rotterdam Junction, Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry., at Newport. When via the Wabash railroad, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Junction.

Cincinnati, O., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

1254 Columbus, O., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Duluth shipments route:
Via Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

Fargo, S. D., shipments route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry., at St. Paul.

Fort Dodge, Ia., shipments route:
Via Union Pacific R. R. to Council Bluffs, thence via Illinois Central railroad.

Grand Forks, N. D., shipments route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry. care Northern Pacific Ry., at St. Paul.

Indianapolis, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four), through St. Louis.

Lafayette, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Louisville, Ky., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).

Minneapolis shipments route:
Via Ogden, Union Pacific railroad and Chicago, St. Paul, Minneapolis & Omaha Ry.

Nashville, Tenn, shipments route:
Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.

New York city shipments route:
Via the Erie railroad from Buffalo.

1255 Philadelphia shipments route:

Via the Pennsylvania lines..... ..... 100 per cent.

B. & O. R. R., and B. & O. S. W. Ry. will receive their proportion as shown under heading "Preferred deliveries."

Pittsburgh shipments route:
Via the Pennsylvania lines.

Salt Lake City, Utah, shipments route:

Via Oregon Short Line..... 50 per cent.
Via Rio Grande Western R. R..... 50 per cent.

Sioux City, Ia., shipments route:
Via Union Pacific railroad.

St. Paul shipments route:
Via Ogden, Union Pacific railroad, and Chicago, St. Paul, Minneapolis & Omaha railway.
St. Joe, see letter 3 / 28.
Troy, N. Y., shipments route:
From Buffalo, via New York Central & Hudson River R. R.
Vancouver, B. C., shipments route:
From Tacoma, via Western Steam Navigation Co.'s steamers "North Pacific" or "Mainlander."
Wichita, Kan., shipments route:
Via Chicago, Rock Island & Pacific Ry. at Ft. Worth, Tex.
Winnipeg shipments route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha railway, care Northern Pacific Ry. at St. Paul.

On business moving through New Orleans, to points shown below, routing as indicated must be observed:

Atlanta, Ga., via Louisville & Nashville R. R., Western Railway of Alabama and Atlanta & West Point R. R.
1256 Asheville, N. C.—Via New Orleans & Northeastern Ry. and Alabama Great Southern railway.
Charleston, S. C.—Via Louisville & Nashville R. R., Georgia railroad.
Jacksonville, Fla.—Via Louisville & Nashville R. R. and Plant system.
Macon, Ga.—Via Louisville & Nashville R. R., Western Ry. of Alabama and Central of Georgia railway.
Mobile, Ala.—Via Louisville & Nashville R. R.
Montgomery, Ala.—Via Louisville & Nashville R. R.
Savannah, Ga.—Via Louisville & Nashville R. R. and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line or lines, as shown, *must be used:*

Destination.	Preferred delivery.	When shipped by—
Austin, Tex...	Internat'l & Gt. Northern R. R.	So. Cal. Fruit Exchange
Albany, N. Y.	Delaware & Hudson Co...	Earl Fruit Co.
Aberdeen, S. D.	Chicago, Mil. & St. Paul Ry.	Porter Bros. Co.
Aberdeen, Ind., for Moulton & Ridel	C. C. C. & St. L. (Big Four)	So. Cal. Fruit Exchange
Atlanta, Ga...	Southern Ry.....	So. Cal. Fruit Exchange.

1257

Destination.	Preferred delivery.	When shipped by—
Baltimore, Md.	Pennsylvania lines	Earl Fruit Co.
Do.	Baltimore & Ohio R. R.	So. Cal. Fruit Exchange
Do.	Do.	Fay Fruit Co.
Do.	Do.	A. Gregory.
Birmingham, Ala.	Southern railway	So. Cal. Fruit Exchange
Boston, Mass.	Fitchburg railway	A. Gregory.
Do.	Do.	West. Am. Fruit Co.
Do.	Do.	O. L. Lyon & Sons.
Do.	Do.	So. Cal. Fruit Exchange
Do.	Do.	Fay Fruit Co.
Do.	Fitch. and Boston & Maine.	Redlands O. G. Ass'n.
Buffalo, N. Y.	Wabash Ry. or Lake Shore & M. S.	So. Cal. Fruit Exchange
Do.	Lake Shore & Mich. So'n Ry.	Fay Fruit Co.
" (C. B. Long & Co.)	Do.	All shippers.
Canadian points	Grand Trunk Ry	So. Cal. Fruit Exchange

(Also see Canadian points specifically mentioned herein, alphabetically.)

Chattanooga, Tenn.	Southern Ry	So. Cal. Fruit Exchange
Chicago, Ills.	Chi. Mil. & St. Paul Ry. or Chicago & Northwestern Ry.	Earl Fruit Co.
Do.	Chi., Mil. & St. Paul Ry. or Ills. Cent.	So. Cal. Fruit Exchange.
Do.	Do.	Fay Fruit Co.
Do.	Ill. Centl. C. & N. W. or C., Mil. & St. Paul Ry.	Ruddock, Trench & Co.

1258

Chicago, Ills.	Chicago & Northwestern Ry.	Porter Brothers Co.
Do.	Illinois Central R. R.	Redlands Ecl. O. Ass'n.
Cincinnati, O.	Pennsylvania R. R.	So. Cal. Fruit Exchange.
Do.	C. C. C. & St. L. (Big Four).	Fay Fruit Co.
Do.	Pennsylvania railroad	Earl Fruit Co.
" Hammer & Co.	Do.	Ruddock, Trench & Co.
Cincinnati, O.	Baltimore & Ohio R. R.	A. Gregory.

Destination.	Preferred delivery.	When shipped by—
Columbus, O.	Pennsylvania lines.....	A. Gregory.
Do. ...	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
Do. ...	Pan Handle.....	I. L. Lyon & Sons.
Cleveland, O.	Nickel Plate.....	A. Gregory.
Do. ...	Do.	I. L. Lyon & Sons.
Do. ...	Do.	West Am. Fruit Co.
Do. ...	Do.	So. Cal. Fruit Exchange.
Denver(Humphrey's Com. Co.)	Cal. Midland.....	Ruddock, Trench & Co.
Denver, Colo.	Union Pacific R. R.....	Fay Fruit Co.
Do. ...	Do.	Redlands O. G. Ass'n.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	Redlands Ecl. O. G. Assn.
Des Moines, Ia.	Chicago, R. I. & Pac. Ry...	So. Cal. Fruit Exchange.
Do. ...	Chicago Great Western Ry.	Ruddock, Trench & Co.
Do. (Davidson Bros.)	Do.....	Covina O. G. Assn.
1259		
Des Moines, Ia. (C. C. Taft & Co.)	C. R. I. & P. Ry.....	Ruddock, Trench & Co.
Detroit, Mich.	Grand Trunk Ry. or Mich. Cent'l.	So. Cal. Fruit Exchange
Do. ...	Grand Trunk Ry.....	Fay Fruit Co.
Do. ...	Michigan Central Ry.....	I. L. Lyon & Sons.
Do. ...	Do.	West Am. Fruit Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	Lake Shore & Mich. So'n Ry.	A. Gregory.
Fort Wayne, Ind.	Wabash Ry.....	A. Gregory.
Grand Rapids, Mich. (A.J. Brown Seed Co)	Grand Rapids & Indiana Ry.	A. Gregory.
Galesburg, Ill.	Burlington route..... ...	I. L. Lyon & Sons.
Do. ...	Do.	So. Cal. Fruit Exchange
Grand Island, Neb.	Do.	So. Cal. Fruit Exchange
Guelph, Ont..	Grand Trunk Ry.....	So. Cal. Fruit Exchange
Hartford, Conn.	Central New England.....	Redlands O. G. Ass'n.

Destination.	Preferred delivery.	When shipped by—
Hamilton, Ont.	Grank Trunk Ry.....	So. Cal. Fruit Exchange
Hamilton, O..	Pan Handle.....	Ruddock, Trench & Co.
Do. ...	Do.	Earl Fruit Co.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	C. K. Short.
" (J. Amicon & Bro.)	Do.	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L. or Vandalia.	So. Cal. Fruit Exchange
Jackson, Mich.	Michigan Central Ry.....	So. Cal. Fruit Exchange

1260

Kansas City, Mo.	Missouri, Kansas & Texas Ry.	Fay Fruit Co.
Keene, N. H..	Boston & Maine R. R.....	West Am. Fruit Co.
Kalamazoo, Mich.	Michigan Central Ry.....	West Am. Fruit Co.
Lafayette, Ind.	Wabash Ry.....	A. Gregory.
" (Pottlitzner Bro.)	C. C. C. & St. L.....	So. Cal. Fruit Exchange.
La Salle, Ind.	Burlington route.....	So. Cal. Fruit Exchange.
Lima, O.....	Lake Erie Western Ry.....	Covina O. G. Ass'n.
Do.....	Erie railroad.....	Altschul Bros. & Co.
Lincoln, Neb.	Burlington route or C. R. I. & P.	So. Cal. Fruit Exchange.
Louisville, Ky.	Baltimore & Ohio S. W. R. R.	So. Cal. Fruit Exchange.
London, Canada.	Michigan Central Ry.....	So. Cal. Fruit Exchange.
Milwaukee, Wis.	Chi. Mil. & St. Paul Ry...	Fay Fruit Co.
Do. ...	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Do. ...	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange
Minneapolis, Minn.	Chicago, Mil. & St. Paul Ry.	So. Cal. Fruit Exchange
Do. ...	Do.....	Covina O. G. Ass'n
Do. ...	C. M. & St. P., or C. St. P. M. & O.	Porter Brothers Co.
" (Kneen & Co.)	Chi. St. P. M. & O..... ...	Ruddock, Trench & Co.
Montreal, Quebec.	Grand Trunk Ry.....	So. Cal. Fruit Exchange.

Destination.	Preferred delivery.	When shipped by—
New York city.	Erie railroad	C. J. Shepherd.
Do.	Do.	So. Cal. Fruit Exchange.
Do.	Do.	Covina O. G. Ass'n.
1261		
New York city.	Erie railroad	Fay Fruit Co.
Do.	Do.	Porter Brothers Co.
Do.	Do.	Ruddock, Trench & Co.
Do.	Do.	Earl Fruit Co.
Do.	Do.	Redlands O. G. Ass'n.
Do.	Do.	I. L. Lyon & Sons.
Do.	Baltimore & Ohio R. R.	A. Gregory.
Do.	Do.	A. B. Devine.
" (Westfall Fruit Co.)	Do.	A. G. Stearns.
Omaha, Neb.	U. P., C. R. I. & P. or B. & M. R.	So. Cal. Fruit Exchange
Do.	Do.	Fay Fruit Co.
Do.	Burlington route	Redlands O. G. Ass'n.
Do.	Do.	I. L. Lyon & Sons.
Oshkosh, Wis.	Chicago & Northwestern Ry.	I. L. Lyon & Sons.
Ottawa, Ont.	Canada Atlantic	Ruddock, Trench & Co.
Do. (Ottawa F. & P. Co.)	Grand Trunk Ry	J. A Maddock.
Peoria, Ills.	Burlington route	So. Cal. Fruit Exchange.
Philadelphia, Penn.	Baltimore & Ohio R. R.	So. Cal. Fruit Exchange.
Do.	Do.	Covina O. G. Ass'n.
Do.	Do.	Sandiland Brothers.
Do.	Pennsylvania lines	Fay Fruit Co.
Do.	Do.	I. L. Lyon & Sons.
Do.	Lehigh Valley R. R.	Ruddock, Trench & Co.
Do.	Philadelphia & Reading	Porter Brothers Co.
1262		
Philadelphia, Penn.	Philadelphia & Reading	Earl Fruit Co.
Do.	Do.	Redlands Ecl. O. G. Assn.

Destination.	Preferred delivery.	When shipped by—
Pittsburgh, Penn.	Pennsylvania Company...	So. Cal. Fruit Exchange.
Do. ...	Pennsylvania lines.....	Earl Fruit Co.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Do.	Ruddock Trench & Co.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	Moulton & Greene.
Do. ...	Do.	Sandiland Brothers.
Do. ...	Do.	Sparr Fruit Co.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Salisbury Fruit Co.
Do. ...	Do.	F. H. Edwards.
Rockford, Ill.	Ill. Central Ry.....	Redlands O. G. Ass'n.
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.
Do. ...	Lehigh Valley R. R.....	Earl Fruit Co.
Scranton, Penn.	Delaware, Lackawanna & W.	So. Cal Fruit Exchange.
Sioux City, Ia.	Union Pacific R. R.....	So. Cal. Fruit Exchange.
Springfield, Mass.	Boston & Albany R. R.....	Earl Fruit Co.
" (H. J. Perkins)	Do.	Walter S. Newhall.
" ...	N. Y. N. H. & H. R. R.....	San Antonio F. Exc.
St. Louis, Mo.	St. Louis & San Francisco R. R.	Ruddock, Trench & Co.
Do. ...	Mo. Pac. or C. B. 2.....	So. Cal. Fruit Exchange.
Do. ...	Burlington route or M. K. & T.	Fay Fruit Co.
1263		
St. Paul, Minn.	Chicago, Milwaukee & St. Paul.	So. Cal. Fruit Exchange
Do. ...	C. St. P. M. & O. or C. M. & St. P.	Porter Brothers Co.
Do. ...	C. St. P. M. & O. R. R.....	Fay Fruit Co.
" (Kneen & Co.)	Do.	Ruddock, Trench & Co.
Syracuse, N. Y.	New York Central & H. R. R. R.	Ruddock, Trench & Co.
Toledo, O.....	Lake Shore & Mich. Southern Ry.	So. Cal. Fruit Exchange
Toronto, Canada.	Canadian Pacific Ry.....	So. Cal. Fruit Exchange
Do. ...	Grand Trunk Ry.....	Redlands Orange Co.
Utica, N. Y...	Delaware, Lackawanna & W. Ry.	Earl Fruit Co.

Destination.	Preferred delivery.	When shipped by—
Washington, D. C.	Baltimore & Ohio R. R.....	So. Cal. Fruit Exchange
Do. ...	Pennsylvania lines.....	Earl Fruit Co.
Waterloo, Ia..	Chicago, Great Western Ry.	So. Cal. Fruit Exchange
Wheeling, W. Va.	Baltimore & Ohio R. R.....	So. Cal. Fruit Exchange
Winona, Minn.	Burlington route.....	West Am. Fruit Co.
Worcester, Mass.	Fitchburg Ry.....	West Am. Fruit Co.
Winnipeg, Manitoba.	Northern Pacific Ry.....	I. L. Lyon & Sons.
Youngstown, Ohio.	Baltimore & Ohio R. R.....	I. L. Lyon & Sons.

Preferred Deliveries by Switching Service.

Pages 8, 9, 10, and 11 show shippers' preferred delivering lines in various cities. At points shown below such preferred deliveries may be effected by switching service; therefore, to prevent a line 1264 receiving more than its allotment, business may be routed via another line and desired delivery be given.

Point.	Lines that will perform switching for each other.
Kansas City, Mo.....	St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago, Rock Island & Pacific railway.
St. Louis, Mo.....	Wabash railroad. St. Louis, Iron Mountain & Southern railway. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago & Alton railway.
Cincinnati, Ohio.....	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis railway.
Buffalo, N. Y.....	Grand Trunk railway. Lake Shore & Michigan Southern railway. Michigan Central railway. New York, Chicago & St. Louis railway. (New York Central & Hudson River R. R. performs all switching service for the three lines last named. Hence those lines have no deliveries in Buffalo, excepting in the New York Central's freight depot or team track. Lines therefore performing switching would be the N. Y. C. & H. R. R. and the Grand Trunk Ry.)

1265 NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 5, 6, and 7,) or "Delivering line instructions" (see pages 8, 9, 10 and 11,) must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

NOTE 4.—Do not route any citrus fruit shipments made by A. G. Stearns via the St. Louis & San Francisco R. R. Please pay particular attention to this.

It is appreciated that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the best you can in line with these instructions,—which, however, are liable to be changed at any time.

When but few cars are shipped, all may be routed one day via one route, via another route the next day, and so on, but the result to be as above, as nearly as possible

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Yours truly,

(Signed) G. A. PARKYNS.

N. B.—Acknowledge receipt by return mail.

1266 CC Mr. Wm. Sproule, San Francisco.
Mr. W. G. Neimyer, G. W. A., Chicago, Ills.

1267 (2-17-'00—2M.) 2. TG. 90.

Subject:
(Southern Pacific Company
Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. A. Parkyns,
Asst. gen. frt. & pass. agt.

(Interstate rates are subject to provisions of interstate commerce law.

Unless otherwise agreed, all local rates are subject to change without further notice.

Most of this company's freight cars are built to carry twenty to thirty tons weight. Never load less than 12 tons. If shippers load to weight capacity, which is plainly marked on sides of car, it will do much to obviate delay in furnishing cars for loading and prevent detention in transit. Do not load to exceed weight capacity.)

CPW

In your reply, please refer to A 2–13259

Confidential.

NOTE.—This letter cancels all previous routing and delivering line instructions, excepting as noted on page 8 hereof.

LOS ANGELES, CAL., May 3rd, 1902.

Mr. W. S. Pollock, agent, Los Angeles, Cal.
Mr. D. A. Bruce, agent, Colton, Cal.

Routing of Citrus Fruit Shipments South of Mojave.

1268 GENTLEMEN: Referring to Trans-continental Freight Bureau east-bound special tariff No. S. R. 267, effective February 1st, 1901, announcing:

"In guaranteeing the through rate named herein, the absolute "and unqualified right of routing beyond its own terminal is re- "served to initial carrier giving guarantee."

Also Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit if routing instructions are shown thereon. Agents will, therefore, not accept verbal routing, but initial carrier will route each car from point of origin to destination.

Diversions in transit will be permitted only by consent of initial carrier, who will thereupon designate new routing, when diversion necessitates change therein.

You will, therefore, commencing May 4th, 1902, please route Transcontinental shipments of citrus fruit originating on this company's lines, south of Mojave, for the present, as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railway.
Texas & Pacific railway.
Southern Pacific Co. (Atlantic system, including New Orleans).

1269 The remainder route:

Via Ogden..... 90 per cent.
Via El Paso..... 10 per cent.

Business via El Paso:

Via Texas & Pacific Ry..... 100 per cent

Texas & Pacific Railway business route:

From Texarkana, Tex., via St. L. I. M. & Southern Ry. to St. Louis	30 per cent.
From Paris, Tex., via St. Louis & San Francisco R. R. to St. Louis	25 per cent.
From Ft. Worth, Texas, via C. R. I. & P. T. Ry. and C. R. I. & P. to Kansas City	30 per cent.
From Ft. Worth, Tex., via Missouri, Kansas & Texas Ry	15 per cent.

Chicago, Rock Island & Pacific Ry. proportion route from Kansas City:

Via Chicago, Milwaukee & St. Paul Ry	30 per cent.
Via Chicago Great Western Ry	20 per cent.
Via Chicago, Rock Island & Pacific Ry	50 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined to Chicago only.)

Missouri, Kansas & Texas Ry. proportion route:

Via Kansas City	70 per cent.
Via St. Louis	30 per cent.

Missouri, Kansas & Texas Ry. proportion route via Kansas City, route:

Via Chicago, Milwaukee & St. Paul Ry	50 per cent.
Via Chicago Great Western Ry	25 per cent.
Via Chicago & Alton Ry	25 per cent.

(Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, of business destined Chicago only.)

1270 Missouri, Kansas & Texas Ry. proportion, via St. Louis, to or via Chicago, route:

Via Wabash railroad	70 per cent.
Via Chicago & Alton Ry	30 per cent.

St. Louis, Iron Mountain & Southern Ry. and S. Louis & San Francisco Ry. proportion via St. Louis to Chicago, route:

Via Wabash railroad	70 per cent.
Via Chicago & Alton Ry	30 per cent.

Business destined east of Chicago, route from Chicago:

Via Michigan Central Ry. (to Buffalo)	20 per cent.
Via New York, Chicago & St. Louis Ry. do.	20 per cent.
Via Lake Shore & Michigan Southern Ry. do.	15 per cent.
Via Grand Trunk Ry. do.	10 per cent.
Via Pennsylvania lines	15 per cent.
Via Baltimore & Ohio Ry	15 per cent.
Via Grand Trunk Ry. (Long haul.)	5 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R... 30 per cent.
Via West Shore railway..... 30 per cent.
Via Delaware, Lackawanna & Western R. R..... 20 per cent.
Via Lehigh Valley railroad..... 20 per cent.

Business via St. Louis to points east thereof, (except Chicago) route:

Via Wabash railroad.....
New York business via Wabash R. R., route via Erie R. R.....
Boston business via Wabash R. R., route via Canadian Pacific R. R., care Boston & Maine R. R., Newport, Me. Fitchburg delivery... } 20 per cent.
Via Pennsylvania lines..... 20 per cent.
Via Baltimore & Ohio Southwestern Ry..... 20 per cent.

1271 Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big 4) (connections for New York business are Lake Shore & Michigan Southern and Erie railroads)..... 35 per cent.

Business via Ogden, route:

Via Union Pacific system..... 70 per cent.
Via Rio Grande Western Ry..... 30 per cent.

Rio Grande Western Ry. proportion, route:
(Excepting Chicago business, routing for which see note below.)

Via Denver & Rio Grande R. R., Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R..... 40 per cent.
Via Denver & Rio Grande R. R., Missouri Pacific R. R., and Chicago & Alton Ry..... 30 per cent.
Via Colorado Midland Ry., Chicago, Rock Island and Pacific Ry., and Chicago Great Western Ry., from St. Joseph, Mo..... 30 per cent.

NOTE.—Chicago business route from Missouri river:

Via Chicago & Northwestern Ry ..... 80 per cent.
Via Chicago, Milwaukee & St. Paul Ry..... 20 per cent.

Union Pacific System business, route:

Via Illinois Central R. R..... 60 per cent.
Via Chicago & Northwestern Ry..... 40 per cent.

Business destined east of Chicago, route from Chicago:

Via Michigan Central Ry.....(to Buffalo).. 20 per cent.
Via New York, Chicago & St. Louis Ry. do. .. 20 per cent.
Via Lake Shore & Michigan Southern Ry. do. .. 15 per cent.
Via Grand Trunk Ry..... do. .. 10 per cent.

Via Pennsylvania lines..... 15 per cent.
Via Baltimore & Ohio R. R..... 15 per cent.
Via Grand Trunk Ry. (long haul)..... 5 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson R. R..... 30 per cent.
1272 Via West Shore Ry..... 30 per cent.
Via Delaware, Lackawanna & Western R. R..... 20 per cent.
Via Lehigh Valley R. R..... 20 per cent.

Colorado common points business, route:

Via Union Pacific railroad..... 50 per cent.
Via Rio Grande Western R. R..... 50 per cent.

Rio Grande Western Railroad proportion, route:

Via Colorado Midland Ry..... 50 per cent.
Via Denver & Rio Grande R. R..... 50 per cent.

NOTE.—It is expected that specific routings (see pages 5, 6, and 7) will give to the El Paso route its full proportion of 10 per cent.

NOTE.—Give the Colorado Midland Ry. its allotment, as nearly as may be, in trainloads.

Specific Routings.

Atlanta, Ga. shipments route:
Care the Nashville, Chattanooga & St. Louis Ry. at Memphis.

Baltimore shipments route:

Via Baltimore & Ohio railroad when via Chicago..... 66⅔ per cent.
Via Pennsylvania lines..... 33⅓ per cent.

Boston shipments route:
In care Boston & Maine Ry. (Fitchburg division), at Rotterdam junction, Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry., at Newport.

When via the Wabash railroad, route care of the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport junction.

Cincinnati, Ohio, shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Columbus, O., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

1273 Duluth shipments route:
Via the Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

Fargo, S. D., shipments route:
Via Union Pacific railroad, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry., at St. Paul.

Fort Dodge, Ia., shipments route:
Via Union Pacific R. R. to Council Bluffs, thence via Illinois Central R. R.
Grand Forks, N. D., shipments route:

Via Northern Pacific R. R..... ..... 50 per cent.
Via Great Northern Ry..... 50 per cent.

Indianapolis, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago, & St. Louis Ry. (Big Four) through St. Louis.
Lafayette, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)
Louisville, Ky., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)
Minneapolis shipments routes:
Via Ogden, Union Pacific R. R., and Chicago, St. Paul, Minneapolis & Omaha Ry.
Nashville, Tenn., shipments route:
Care Nashville, Chattanooga & St. Louis Ry. at Memphis.
New York City shipments route:
Via Erie R. R. from Buffalo.
Philadelphia shipments route:

Via Pennsylvania lines ..... 100 per cent.

B. & O. R. R., and B. & O. S. W. Ry. will receive their proportion as shown under heading "Preferred deliveries."

1274 Pittsburgh shipments route:
Via Pennsylvania lines.
Salt Lake City, Utah, shipments route:

Via Oregon Short Line..... 50 per cent.
Via Rio Grande Western R. R..... 50 per cent.

Sioux City, Ia., shipments route:
Via Union Pacific R. R.
St. Paul shipments route:
Via Ogden, Union Pacific R. R. and Chicago, St. Paul, Minneapolis & Omaha Ry.
St. Joe, Mo. shipments route:

Via Union Pacific Ry. and St. Joe & Grand Island Ry..... 50 per cent.
Via C. R. I. & P. Ry., and St. Joe & Grand Island Ry..... ..... 50 per cent.

Troy, N. Y., shipments route:
From Buffalo, via New York Central & Hudson River R. R.
Vancouver, B. C., shipments route:
From Seattle, via Western Steam Navigation Co.'s steamers "Northern Pacific" or "Mainlander."

Wichita, Kan., shipments route:
Via Chicago, Rock Island & Pacific Ry. at Ft. Worth, Tex.
Winnipeg, shipments route:
Via Union Pacific Ry., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

On business moving through New Orleans, to points shown below, routing as indicated *must be* observed:

Atlanta, Ga.—Via Louisville & Nashville R. R., Western Ry. of Alabama and Atlanta & West Point R. R.
Asheville, N. C.—Via New Orleans & Northwestern Ry. and Alabama Great Southern Ry.
Charleston, S. C.—Via Louisville & Nashville R. R., Georgia R. R.
1275 Jacksonville, Fla.—Via Louisville & Nashville R. R. and Plant system.
Macon, Ga.—Via Louisville & Nashville R. R., Western Ry of Alabama, and Central of Georgia Ry.
Mobile, Ala.—Via Louisville & Nashville R. R.
Montgomery, Ala.—Via Louisville & Nashville R. R.
Savannah, Ga.—Via Louisville & Nashville R. R. and Plant system.

Preferred Delivering Lines.

Preferred delivering lines shown on pages 8, 9, 10 and 11, of my letter March 13th, *must be used.* The only changes therein are:

Page 8, shipments destined Chicago, Ills., preferred delivery C. M. & St. Paul Ry., *or Ill. Central Ry.*, when shipped by So. Cal. Fruit Exchange.

Page 9, shipments destined Denver, add Colorado Midland Ry. delivery when shipped by Ruddock, Trench & Co., to Humphreys Commercial Co.

Page 10, strike out Providence, R. I., Central New England de livery, and So. Cal. Fruit Exchange.

Page 11, shipments destined St. Louis, Mo., when shipped by So. Cal. Fruit Exchange, strike out C. M. & St. P., and insert C. B. & Q. which will then permit of Mo. Pac. or C. B. & Q., delivery at St. Louis.

Pages 12 and 13, my letter March 13th, 1902, stand-, and instructions therein contained must be followed.

Yours truly, G. A. PARKYNS.

1276 Please acknowledge receipt by return mail.

CC Mr. Wm. Sproule, San Francisco.
Mr. W. G. Neimyer, gen. agt., Chicago, Ills.

1277 Q. Have you the papers pertaining to the next year, Mr. Parkyns?

A. Yes, sir. (Witness hands document to counsel.)

Mr. CALL: I also offer the several letters, embraced in one file, commencing with date November 4, 1902, and ending with April 18, 1903, and marked Complainant's Exhibit 41.

1278 (2-5-'02—3M.) 2. TG. 90.

Subject:	Office
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)	Asst. gen. frt. & pass. agent, Pacific system, 261 South Spring street (Douglas building). G. A. Parkyns, Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated, and are subject to change without notice, except the printing and posting of tariffs when law so provides.

Rates named on commodities in carloads will base on full space or weight loading capacity of car, but not less than minimum carload weight as provided in tariffs. Load 10 per cent. above weight capacity marked on car when space permits.)

M

In your reply, please refer to B 2-13259

Confidential.

NOTE.—*This letter cancels all previous routing and delivering lines instructions.*

LOS ANGELES, CAL., Nov. 4th, 1902.

Mr. W. S. Pollock, agent, Los Angeles.
Mr. D. A. Bruce, agent, Colton.
Mr. C. J. Ellis, agent, Sacramento.

1279 Routing of Citrus Fruit Shipments South of Mojave and Santa Barbara (Latter Inclusive).

GENTLEMEN: Referring to Transcontinental Freight Bureau eastbound special tariff No. S. R. 297, effective January 21st, 1902, announcing:

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee."

Also, to Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon:

Agents will, therefore, not accept routing, but initial carrier will route each car from point of origin to destination, except as provided in Southern Pacific Company's circular No. 105, bearing date Los Angeles August 20th, 1902.

Diversions in transit will be permitted only by consent of initial carrier, who will thereon designate new routing when diversion necessitates change therein.

You will, therefore, commencing Nov. 1st, 1902, please route Transcontinental shipments of citrus fruit originating on this company's line south of Mojave and Santa Barbara (latter inclusive) for the present as follows:

1280 First, deduct business destined to non-competitive points on the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railroad.
Texas & Pacific railroad.
Southern Pacific Co. (Atlantic system, including New Orleans).
Rock Island.

Also business destined points in Texas and Louisiana, for which specific routing is provided is circular No. 459 of Oct. 2nd, 1902.

The remainder route:

Via Ogden	10	per cent
Via El Paso	90	per cent

Business via El Paso route:

Via G. H. & S. A. Ry	12.5	per cent
Via Texas & Pacific Ry	43.75	per cent
Via Rock Island	43.75	per cent

Texas & Pacific Railway business route:

From Texarkana, Texas, via St. L. I. M. & S. Ry. to St. Louis	30	per cent
From Paris, Texas, via St. Louis & San Francisco Ry. to St. Louis	25	per cent
From Fort Worth, Texas, via M. K. & T. Ry.	15	per cent
From Fort Worth, Texas, via C. R. I. & T. Ry. and C. R. I. & P. Ry., to Kansas City	30	per cent

Chicago, Rock Island & Pacific Ry. proportion route from Kansas City:

Via Chicago, Milwaukee & St. Paul Ry	30	per cent
1281 Via Chicago, Rock Island & Pacific Ry	50	per cent
Via Chicago & Great Western Ry	20	per cent

NOTE.—Give the Chicago, Milwaukee & St. Paul Ry. its allotment as nearly as can be, on business destined to Chicago proper.

Missouri, Kansas & Texas Railway proportion route:

Via Kansas City	100	per cent

Missouri, Kansas & Texas Railway proportion route via Kansas City route:

Via Chicago, Milwaukee & St. Paul Ry	50 per cent.
Via Chicago & Great Western Ry	25 per cent.
Via Chicago & Alton Ry	25 per cent.

NOTE.—Give the Chicago, Milwaukee & St. Paul Ry. its allotment as nearly as can be, of business destined Chicago proper.

St. Louis, Iron Mountain and Southern railway, via St. Louis to Chicago, route:

Via Illinois Central Ry	40 per cent.
Via Wabash Ry	30 per cent.
Via Chicago & Alton Ry	30 per cent.

Rock Island business via El Paso route:

Via Rock Island Ry. (long haul)	100 per cent.

NOTE.—Shipments for Chicago proper, when routed Rock Island, if C. M. & St. P. delivery desired, route care that line at Burr Oak. If C. & N. W. delivery desired, route care Elgin, Joliet & Eastern and C. & N. W. railways Joliet, Ill.

1282 Business destined east of Chicago route from Chicago:

Via Michigan Central Ry. to Buffalo	20 per cent.
Via New York, Chicago & St. Louis Ry., to Buffalo	20 per cent.
Via Lake Shore & Michigan Southern Ry. to Buffalo	15 per cent.
Via Grand Trunk railway to Buffalo	10 per cent.
Via Pennsylvania lines	15 per cent.
Via Baltimore & Ohio Ry	15 per cent.
Via Grand Trunk Ry. (Long haul.)	5 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R.	30 per cent.
Via West Shore railway	30 per cent.
Via Delaware, La-kawanna & Western R. R.	20 per cent.
Via Lehigh Valley Ry	20 per cent.

Business via St. Louis to points east thereof (except Chicago) route:

Via Wabash railway	20 per cent.

NOTE.—New York business via Wabash R. R. route via Erie R. R.; Boston business via Wabash R. R., route via Canadian Pacific R. R., care Boston & Maine R. R., Newport, Me., Fitchburg delivery. Business destined New England points must not be routed via Wabash, West Shore and Boston & Albany railways,

account no divisions. When necessary, Wabash, West Shore and Boston & Maine routing may be used for shipments destined points on latter line.

Via Pennsylvania lines..... 20 per cent.
1283 Via Baltimore & Ohio Southwestern Ry..... 25 per cent.
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)..... 35 per cent.

NOTE.—Connections for New York business are, Lake Shore & Michigan Southern and Erie railroads.

Business via Ogden, route:

It is expected that specific routings (see pages 5, 6, and 7) will give to the Ogden route its full proportion of 10 per cent.

Colorado common point- business route:

Via Union Pacific Ry..... 50 per cent.
Via Rio Grande Western R. R..... 50 per cent.

Rio Grande Western proportion route:

Via Colorado Midland Ry..... 50 per cent.
Via Denver & Rio Grande R. R..... 50 per cent.

Specific Routings.

Atlanta, Ga., shipments route:
Care the Nashville, Chattanooga and St. Louis Ry. at Memphis.

Baltimore shipments route:

Via Baltimore & Ohio R. R., when via Chicago. 66⅔ per cent.
Via Pennsylvania lines ..... 33⅓ per cent.

Boston shipments route:
In care Boston & Maine Ry. (Fitchburg division) at Rotterdam Jct.
Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry., at Newport.
When via the Wabash R. R., route care the Canadian Pacific Ry., care of the Boston & Maine Ry. at Newport Jct.

1284 Cincinnati, O., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Columbus, O., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)

Duluth shipments route:
Via the Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific railway at St. Paul.

Fargo, S. D., shipments route: U. P. C. M. & St. P. at Council Bluffs.
Via Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

Fort Dodge, Ia., shipments route:
Via Union Pacific R. R. to Council Bluffs, thence via Illinois Central R. R.
Grand Forks, N. D., shipments route:

Via Northern Pacific R. R..... 50 per cent.
Via Great Northern Ry..... 50 per cent.

Indianapolis, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four) through St. Louis.
Lafayette, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Louisville, Ky., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four).
Minneapolis shipments route:
Via Ogden, Union Pacific R. R., and Chicago, St. Paul, Min-
1285 neapolis & Omaha Ry.
Nashville, Tenn., shipments route:
Care Nashville, Chat-anooga & St. Louis Ry. at Memphis.
New York City shipments route:
Via Erie R. R. from Buffalo.
Philadelphia shipments route:

Via Pennsylvania lines..... 100 per cent.

B. & O. R. R. and B. & O. S. W. Ry. will receive their proportion as shown under heading "Preferred deliveries."
Pittsburgh shipments route:
Via Pennsylvania lines.
Salt Lake City, Utah, shipments route:

Via Oregon Short Line..... ..... 50 per cent.
Via Rio Grande Western R. R.. ..... 50 per cent.

Sioux City, Iowa, shipments route:

Via Union Pacific railroad..... .....

St. Paul shipments route:
Via Ogden, Union Pacific R. R. and Chicago, St. Paul, Minneapolis & Omaha R. R.
St. Joe, Mo., shipments route:

Via Union Pacific Ry. and St. Joe & Grand Island Ry..... 50 per cent.
Via C. R. I. & P. Ry. and St. Joe & Grand Island Ry ..... 50 per cent.

Troy, N. Y., shipments route:
From Buffalo, via New York Central & Hudson River R. R.

Vancouver, B. C., shipments route:
From Tacoma, via Western Steam Navigation Co.'s steamers "North Pacific" or "Mainlander."
Wahpeton, N. D. U. P. & C. M. & St. P. at C. B.
Wichita, Kas., shipments route:
1286 Via Chicago, Rock Island & Pacific R. R. at Fort Worth, Texas.
Winnipeg shipments route:
Via Union Pacific railway, Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific Ry. at St. Paul.

On business moving through New Orleans to points shown below, routing as indicated must be observed:

Atlanta, Ga.:
Via Louisville & Nashville railroad, Western Ry. of Alabama and Atlanta & West Point R. R.
Asheville, N. C.:
Via New Orleans & Northeastern Ry. and Alabama Great Southern Ry.
Charleston, S. C.:
Via Louisville & Nashville R. R., Georgia R. R.
Jacksonville, Fla.:
Via Louisville & Nashville R. R. and Plant system.
Macon, Ga.:
Via Louisville & Nashville R. R., Western Ry. of Alabama, and Central of Georgia Ry.
Mobile, Ala.:
Via Louisville & Nashville R. R.
Montgomery, Ala.:
Via Louisville & Nashville R. R.
Savahnah, Ga.:
Via Louisville & Nashville R. R. and Plant system.

1287 Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line or lines, as shown, *must be used.*

Destination.	Preferred delivery.	When shipped by—
Austin, Tex..	Int. & Gt. Nor. R. R.....	So. Cal. Fruit Exch.
Albany, N.Y..	Delaware & Hudson Co...	Earl Fruit Co.
Aberdeen, S. D.	C. M. & St. P. Ry.....	Porter Bros. Co.
Aberdeen, Ind. for Moulton & Ridel.	C. C. C. & St. L. (Big Four).	So. Cal. Fruit Exch.
Atlanta, Ga...	Southern Ry.....	Do.

Destination.	Preferred delivery.	When shipped by—
Baltimore, Md.	Penna. lines	Earl Fruit Co.
Do.	B. & O. R. R	So. Cal. Fruit Exch.
Do.	Do	Fay Fruit Co.
Do.	Do	A. Gregory.
Birmingham, Ala.	Southern Ry	So. Cal. Fruit Exch.
Boston, Mass.	Fitchburg Ry	A. Gregory.
Do.	Do.	West Am. Fruit Co.
Do.	Do.	O. L. Lyon & Sons.
Do.	Do.	So. Cal. Fruit Exch.
Do.	Do.	Fay Fruit Co.
Do.	Fitch. and Boston & Maine.	Redlands O. G. Ass'n.
Buffalo, N. Y.	Wabash Ry. or L. S. & M. S.	So. Cal. Fruit Exch.
Do.	L. S. & M. S. Ry	Fay Fruit Co.
" (G. B. Long & Co.)	Do.	All shippers.
Canadian points.	Grand Trunk Ry	So. Cal. Fruit Exch.

1288

(Also see Canadian points specifically mentioned herein, alphabetically.)

Chattanooga, Tenn.	Southern Ry	So. Cal. Fruit Exch.
Chicago, Ill.	C. M. & St. P. Ry. or C. & N. W. Ry.	Earl Fruit Co.
Do.	C. M. & St. P. Ry	So. Cal. Fruit Exch.
Do.	Do.	Fay Fruit Co.
Do.	Ill. Cent., C. & N. W. or C. M. & St. P.	Ruddock, Trench & Co.
Do.	C. & N. W. Ry	Porter Bros. Co.
Do.	Ill. Central R. R	Redlands Ecl. O. Ass'n.
Cincinnati	Penna. R. R	So. Cal. Fruit Exch.
Do.	C. C. C. & St. L. (Big Four.)	Fay Fruit Co.
Do.	Penna. R. R	Earl Fruit Co.
" Hamer & Co.	Do.	Ruddock Trench & Co.
Cincinnati, O.	B. & O. R. R	A. Gregory.
Columbus, O.	Penna. lines	A. Gregory.
Do.	B. & O. S. W	So. Cal. Frt. Exch.
Do.	Pan Handle	I. L. Lyon & Sons.
Cleveland, O.	Nickle Plate	A. Gregory.
Do.	Do.	I. L. Lyon & Sons.
Do.	Do.	West Am. Fruit Co.
Do.	Do.	So. Cal. Fruit Exch.

Destination.	Preferred delivery.	When shipped by—
Denver, Colo..	Union Pacific R. R.....	Fay Fruit Co.
Do. ...	Do.	Redlands O. G. Ass'n.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	Redlands Ecl. O. G. Ass'n.
Do. ...	Do.	N. W. Blanchard & Co.
1289		
Des Moines, Ia.	C. R. I. & P. Ry.....	So. Cal. Fruit Exch.
Do. ...	C. G. W. Ry.....	Ruddock Trench & Co.
" (Davidson Bros)	Do.	Covina O. G. Ass'n.
" (C. C. Taft & Co)	C. R. I. & P. Ry	Ruddock Trench & Co.
Detroit, Mich.	Grand Trunk Ry. or Mich. C-ntral	So. Cal. Fruit Exch.
Do. ...	Grand Trunk Ry.....	Fay Fruit Co.
Do. ...	Mich. Cent. Ry.....	I. L. Lyon & Sons.
Do. ...	Do.	West. Am. Frt. Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa.....	L. S. & M. S. Ry	A. Gregory.
Fort Wayne, Ind.	Wabash R. R.....	A. Gregory.
Grand Rapids, Mich. (A.J.Brown Seed Co.)	Grand Rapids & Indiana Ry.	A. Gregory.
Galesburg, Ill.	Burlington route.....	I. L. Lyon & Sons.
Do. ...	Do.	So. Cal. Fruit Exch.
Grand Island, Nebr.	Do.	So. Cal. Fruit Exch.
Guelph, Ont.	Grand Trunk Ry.....	So. Cal. Fruit Exch.
Hartford, Conn.	Central New England	Redlands O. G. Ass'n.
Hamilton, Ont.	Grand Trunk Ry.....	So. Cal. Fruit Exch.
Hamilton, O..	Pan Handle.....	Ruddock Trench & Co.
Do. ...	Do.	Earl Fruit Co.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	C. K. Short.
Do. (Amicon & Bro.)	Do.	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L. or Vandalia.	So. Cal. Fruit Exch.

1290

Destination.	Preferred delivery.	When shipped by—
Jackson, Mich.	Mich. Central.....	So. Cal. Fruit Exch.
Kas. City, Mo.	M. K. & T. Ry.....	Fay Fruit Co.
Keene, N. H..	Boston & Maine R. R.....	West. Am. Fruit Co.
Kalamazoo, Mich.	Mich. Central Ry.....	Do.
Lafayette, Ind.	Wabash.....	A. Gregory.
" (Pottlitzner Bro.)	C. C. C. & St. L.	So. Cal. Fruit Exch.
La Salle, Ind.	Burlington route....	So. Cal. Fruit Exch.
Lima, O.....	Lake Erie Western Ry.....	Covina O. G. Ass'n.
Do.....	Penna. Ry.....	Altschul Bros. & Co.
Lincoln, Neb.	Burlington Rt., or C. R. I. & P.	So. Cal. Fruit Exch.
Louisville, Ky.	B. & O. S. W. Ry.....	So. Cal. Fruit Exch.
London, Canada.	Mich. Central Ry.....	Fay Fruit Co.
London, Ont.	Mich. Cent. from Chicago.	G. G. Steele.
Milwaukee, Wis.	C. M. & St. P. Ry.....	Fay Fruit Co.
Do. ...	C. & N. W. Ry.....	I. L. Lyon & Sons.
Do. ...	C. M. & St. P. Ry.....	So. Cal. Fruit Exch.
Minneapolis, Minn.	C. M. & St. P. Ry.....	So. Cal. Fruit Exch.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do. or C. St. P. M. & O. Ry.	Porter Bros. Co.
" (Kneen & Co.)	C. St. P. M. & O.....	Ruddock, Trench & Co.
Montreal, Quebec.	Grand Trunk Ry.....	So. Cal. Fruit Exch.
New York city.	Erie railroad.....	C. J. Shepherd.
Do. ...	Do.	So. Cal. Fruit Exch.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Do.	Porter Bros. Co.
Do. ...	Do.	Ruddock, Trench & Co.

1291

Destination.	Preferred delivery.	When shipped by—
New York city	Erie railroad	Earl Fruit Co.
Do.	Do.	Redlands O. G. Assn.
Do.	Do.	I. L. Lyon & Sons.
Do.	B. & O. R. R.	A. Gregory.
Do.	Do.	A. B. Devine.
"(Westfall Fruit Co.)	Do.	A. G. Stearns.
Omaha, Neb.	U. P., C. R. I. & P., or B. & M. R.	So. Cal. Fruit Exch.
Do.	Do.	Fay Fruit Co.
Do.	Burlington route	Redlands O. G. Assn.
Do.	Do.	I. L. Lyon & Sons.
Oshkosh, Wis.	C. & N. W. Ry.	Do.
Ottowa, Ont.	Canada Atlantic	Ruddock, Trench & Co.
Do.	Grand Trunk Ry.	J. A. Maddock.
(Ottawa F. & P. Co.) Peoria, Ill.	Burl. route	So. Cal. Fruit Exch.
Philadelphia, Pa.	B. & O. R. R.	So. Cal. Fruit Exch.
Do.	Do.	Covina O. G. Assn.
Do.	Do.	Sandiland Bros.
Do.	Penna. lines	Fay Fruit Co.
Do.	Do.	I. L. Lyon & Sons.
Do.	Lehigh Valley R. R.	Ruddock, Trench & Co.
Do.	Philadelphia & Reading	Porter Bros. Co.
Do.	Do.	Earl Fruit Co.
Do.	Do.	Redlands Ecl. O. G. Ass
Pittsburg, Pa.	Penna. Co.	So. Cal. Fruit Exch.

1292

Pittsburg, Pa.	Penna. lines	Earl Fruit Co.
Do.	Do.	Fay Fruit Co.
Do.	Do.	Ruddock, Trench & Co.
Do.	Do.	A. Gregory.
Do.	Do.	Moulton & Greene.
Do.	Do.	Sandland Bros.
Do.	Do.	Sparr Fruit Co.
Do.	Do.	Covina O. G. Assn.
Do.	Do.	Salisbury Fruit Co.
Do.	Do.	F. H. Edwards.
Pueblo, Colo.	D. & R. G. R. R.	N. W. Blanchard & Co.
Rockford, Ill.	Ill. Central Ry.	Redlands O. G. Assn.

Destination.	Preferred delivery.	When shipped by—
Rochester, N. Y.	West Shore Ry.....	Fay Fruit Co.
Do. ...	Lehigh Valley R. R.....	Earl Fruit Co.
Scranton, Pa.	D. L. & W. Ry.....	So. Cal. Fruit Exch.
Sioux City, Ia.	Union Pacific R. R.....	Do.
Springfield, Mass.	Boston & Albany R. R.....	Earl Fruit Co.
" (H. J. Perkins)	Do.	Walter S. Newhall.
"	N. Y. N. H. & H. R. R.....	San Antonio Fruit Exch.
St. Louis, Mo.	St. L. & San Fran. R. R....	Ruddock, Trench & Co.
Do. ...	Mo. Pac. or Burlington....	So. Cal. Fruit Exch.
Do. ...	Burlington, or M. K & T..	Fay Fruit Co.
St. Paul, Minn.	C. M. & St. P.....	So. Cal. Fruit Exch.
1293		
St. Paul, Minn.	C. St. P. M. & O. or C. M. & St. P.	Porter Bros. Co.
Do. ...	C. St. P. M. & O.	Fay Fruit Co.
" (Kneen & Co.)	Do.	Ruddock, Trench & Co.
Syracuse, N. Y.	N. Y. C. & H. R. R.....	Do.
Toledo, O.....	L. S. & M. S. Ry.....	So. Cal. Fruit Exch.
Toronto, Canada.	Canadian Pacific Ry.....	Do.
Do. ...	Grank Trunk Ry.....	Redlands O. G. Ass'n.
Utica, N. Y...	D. L. & W. Ry.....	Earl Fruit Co.
Washington, D. C.	B. & O. R. R.....	So. Cal. Fruit Exch.
Do. ...	Penna. lines.....	Earl Fruit Co.
Waterloo, Ia.	C. G. W. Ry.....	So. Cal. Fruit Exch.
Wheeling, W. Va.	B. & O. R. R.....	So. Cal. Fruit Exch.
Winona, Minn.	Burlington route.....	West Am. Fruit Co.
Worcester, Mass.	Fitchburg Ry.....	Do.
Winnipeg, Manitoba.	Northern Pacific Ry.....	I. L. Lyon & Sons.
Youngstown, O.	B. & O. R. R.....	I. L. Lyon & Sons.

1294 Preferred Deliveries by Switching Service.

Pages 8, 9, 10 and 11 show shippers' preferred delivering lines in various cities. At points shown below such preferred deliveries may be effected by switching service; therefore, to prevent a line receiving more than its allottment, business may be routed via another line and desired delivery be given.

Point.	Lines that will perform switching service for each other.
Kansas City, Mo	St. Louis & San Francisco railroad. Missouri, Kansas & Texas Ry. Chicago, Rock Island & Pacific railway.
St. Louis, Mo	Wabash railroad. St. Louis, Iron Mountain & Southern railway. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago & Alton railway.
Cincinnati, O.....	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis railway.
1295 Buffalo, N. Y	Grand Trunk railway. Lake Shore & Michigan Southern railway. Michigan Central railway. New York, Chicago & St. Louis railway. (New York Central & Hudson River R.R. performs all switching service for the three lines last named; hence those lines have no deliveries in Buffalo excepting in the New York Central's freight depot or team track. Lines therefore performing switching would be the N. Y. C. & H. R. R. and the Grand Trunk Ry.)

NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 5, 6 and 7) or "Delivering line instructions" (see pages 8, 9, 10 and 11), must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

NOTE 4.—Do not route any citrus fruit shipments made by A. G. Stearns via the St. Louis & San Francisco R. R. Please pay particular attention to this.

1296 It is apprehended that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points

east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the best you can in line with these instructions—which however are liable to be changed at any time.

When but a few cars are shipped, all may be routed one day via one route, via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Please acknowledge receipt by return mail.

Yours truly, G. A. PARKYNS.

CC–WS
CC–WGN
CC–WKMcA

1297 (2–5–'02—3M.) 2 TG. 90.

Subject:
(Southern Pacific Company, Sunset, Ogden & Shasta routes.)

Office
Asst. gen. frt. & pass. agent,
Pacific system,
261 South Spring street
(Douglas building).
G. A. Parkyns,
Asst. gen. frt. & pass. agt.

(Rates quoted by this company are for immediate use unless otherwise stated, and are subject to change without notice, except the printing and posting of tariffs when law so provides.

Rates named on commodities in carloads will base on full space or weight loading capacity of car, but not less than minimum carload weight as provided in tariffs. Load 10 per cent. above weight capacity marked on car when space permits.)

M.

In your reply, please refer to B2–13259

Confidential

NOTE.—*This letter cancels all previous routing and delivering lin instructions.*

LOS ANGELES, CAL., January 1st, 1903.

Mr. W. S. Pollock, agent, Los Angeles.
Mr. D. A. Bruce, agent, Colton.
Mr. C. J. Ellis, agent, Sacramento.

1298 Routing of Citrus Fruit Shipments South of Mojave an Santa Barbara (Latter Inclusive).

GENTLEMEN: Referring to Trans-continental Freight Bureau eas bound special tariff No. S. R. 297, effective January 21st, 190 announcing:

"In guaranteeing the through rate named herein, the absolu and unqualified right of routing beyond its own terminal is reserv to initial carrier giving guarantee."

Also, Trans-continental Freight Bureau circular No. 21, effecti January 1st, 1900, advising that agents will not accept shippin orders or other documents covering shipments of citrus fruit, if rou ing instructions are shown thereon:

Agents will, therefore, not accept routing, but initial carrier wi route each car from point of origin to destination, except as provide in Southern Pacific Company's circular No. 105, bearing date L Angeles, August 20th, 1902.

Diversions in transit will be permitted only by consent of initi carrier, who will thereon designate new routing when diversio necessitates change therein.

You will, therefore, commencing January 1st, 1903, please rou Trans-continental shipments of citrus fruit originating on this con pany's line south of Mojave and Santa Barbara (latter inclusive) f the present as follows:

1299 First, deduct business destined to non-competitive points o the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railroad.
Southern Pacific Co. (Atlantic system, including New O leans.)
Rock Island.

Also business destined points in Texas and Louisiana, for whic specific routing is provided in circular No. 459, of Oct. 2nd, 1902.

The remainder route:

Via Ogden ..... 10 per cen
Via El Paso ..... 90 per cen

Business via El Paso, route:

(*) Via G. H. & S. A. Ry	12.5 per cent.
Via Texas & Pacific Ry	43.75 per cent.
Via Rock Island	43.75 per cent.

(*) NOTE.—Percentage of the G. H. & S. A. should, in-so-far as possible, be made up from shipments destined territory on and south of the Ohio river, and east of the Mississippi river, including the northern boundary line of the State of Virginia.

Texas & Pacific Railway business route:

From Texarkana, Texas, via St. L. I. M. & S. Ry. to St. Louis	30 per cent.
From Paris, Texas, via St. Louis & San Francisco Ry. to St. Louis	25 per cent.
From Fort Worth, Texas, via M. K. & T. Ry	15 per cent.
1300 From Fort Worth, Texas, via C. R. I. & T. Ry. and C. R. I. & P. Ry., to Kansas City	30 per cent.

Chicago, Rock Island & Pacific Railway proportion route from Kas. City:

(*) Via Chicago, Milwaukee & St. Paul Ry	30 per cent.
Via Chicago, Rock Island & Pacific Ry	50 per cent.
Via Chicago & Great Western Ry	20 per cent.

(*) NOTE.—Give the Chicago, Milwaukee & St. Paul Ry. its allotment, as nearly as can be, on business destined to Chicago proper.

Missouri, Kansas & Texas Railway proportion route:

Via Kansas City	100 per cent.

Missouri, Kansas & Texas Railway proportion route via Kansas City route:

† Via Chicago, Milwaukee & St. Paul Ry	50 per cent.
Via Chicago & Great Western Ry	25 per cent.
Via Chicago & Alton Ry	25 per cent.

(†) NOTE.—Give the C. M. & St. P. Ry. its allotment as nearly as can be, of business destined Chicago proper.

St. Louis, Iron Mountain & Southern Ry. via St. Louis to Chicago, route:

Via Illinois Central Ry	40 per cent.
Via Wabash Ry	30 per cent.
Via Chicago & Alton Ry	30 per cent.

Rock Island business via El Paso route:

‡ Via Rock Island Ry. (long haul)	100 per cent.

(‡) NOTE.—Shipments for Chicago proper when routed Rock
1301 Island, if C. M. & St. P. delivery desired, route care that line at Burr Oak. If C. & N. W. delivery desired, route care Elgin, Joliet & Eastern and C. & N. W. railways, Joliet, Ill.

Business destined east of Chicago, from Chicago route:

Via Michigan Central Ry. to Buffalo	20 per cen
Via New York, Chicago & St. Louis Ry. to Buffalo	20 per cen
Via Lake Shore & Michigan Southern Ry. to Buffalo	15 per cen
Via Grand Trunk Ry. to Buffalo	10 per cen
Via Pennsylvania lines	15 per cen
Via Baltimore & Ohio Ry	15 per cen
Via Grand Trunk Ry. (long haul)	5 per cen

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R.	30 per cen
Via West Shore Ry.	30 per cen
Via Delaware, La-kawanna & Western R. R.	20 per cen
Via Lehigh Valley Ry	20 per cen

Business via St. Louis to points east thereof (except Chicag
route:

? Via Wabash Ry	20 per cen

(?) NOTE.—New York business via Wabash R. R. route via Er
R. R.; Boston business via Wabash R. R., route via Canadia
Pacific R. R., care Boston & Maine R. R., Newport, Me., Fitchbu
delivery. Business destined New England points must not be rout
via Wabash, West Shore and Boston & Albany Rys., acct. no div
ions. When necessary, Wabash, W. S. and B. & M. routin
1302 may be used for shipments destined points on latter line.

Via Pennsylvania lines	20 per cen
Via Baltimore & Ohio Southwestern Ry	25 per cen
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big Four)	35 per cen

NOTE.—Connections for New York business are, Lake Shore
Michigan Southern, and Erie railroads.

Business via Ogden route:
It is expected that specific routings (see pages 5, 6, and 7) wi
give to the Ogden route its full proportion of 10 per cent.

NOTE.—Route via C. & N. W. from Council Bluffs all shipmen
destined Chicago or points east thereof, as well as to intermedia
points possible to reach via that line, when not otherwise controll
by specific routings or preferred delivering lines.

Colorado common points business route:

Via Union Pacific railroad	50 per cen
Via Rio Grande Western railroad	50 per cen

Rio Grande Western proportion route:

Via Colorado Midland Ry	50 per cen
Via Denver & Rio Grande railroad	50 per cen

1303 Specific Routings.

Atlanta, Ga., shipments route:
Care the Nashville, Chat-anooga and St. Louis Ry. at Memphis.

Baltimore shipments route:

Via Baltimore & Ohio R. R., when via Chicago ..... 66⅔ per cent.
Via Penna. lines..... 33⅓ per cent.

Boston shipments route:
In care Boston & Maine Ry. (Fitchburg division) at Rotterdam Jct. Mechanicsville, Shelburne Falls, or, when routed via Canadian Pacific Ry., at Newport.
When via the Wabash R. R., route care the Canadian Pacific Ry., care the Boston & Maine Ry. at Newport Jct.

Cincinnati shipments route:
Via C. C. C & St. L. Ry. (Big Four).

Columbus, O., shipments route:
Via C. C. C. & St. L. Ry. (Big Four).

Duluth shipments route:
Via the U. P. R. R., C. St. P. M. & O. Ry., care Northern Pacific railway at St. Paul.

Fargo, S. D., shipments route:
Via the U. P., C. M.-St. P. at Council Bluffs.

Fort Dodge, Ia., shipments route:
Via U. P. railroad to Council Bluffs, thence via Illinois Central railroad.

Grand Forks, N. D., shipments route:

Via Northern Pacific R. R..... 50 per cent.
Via Great Northern Ry..... 50 per cent.

1304 Indianapolis, Ind., shipments route:
Via C. C. C. & St. L. Ry. (Big Four) through St. Louis.

Lafayette, Ind., shipments route:
Via C. C. C. & St. L. Ry. (Big Four).

Louisville, Ky., shipments route:
Via C. C. C. & St. L. Ry. (Big Four).

Minneapolis shipments route:
Via Ogden, Union Pacific R. R., and C. St. P. M. & O. Ry.

Nashville, Tenn., shipments route:
Care Nashville, Chat-anooga and St. Louis Ry. at Memphis.

New York city shipments route:
Via Erie R. R. from Buffalo.

Philadelphia shipments route:

Via Penna. lines..... 100 per cent.

(B. & O. R. R. and B. & O. S. W. Ry. will receive their proportion as shown under heading "Philadelphia deliveries.")

Pittsburg shipments route:
Via Penna. lines.
Salt Lake City, Utah, shipments route:
Via Oregon Short Line..... 50 per cent.
Via Rio Grande Western..... 50 per cent.
Sioux City, Iowa, shipments route:
Via Union Pacific R. R.
St. Paul shipments route:
Via Ogden, Union Pacific R. R. and C. St. P. M. & O. railroad.
St. Joe, Mo., shipments route:
Via Union Pacific R. R. and St. Joe & Grand Island Ry..... 50 per cent.
Via C. R. I. & P. Ry. and St. Joe & Grand Island Ry..... 50 per cent.

1305 Troy, N. Y., shipments route:
From Buffalo, via N. Y. C. & H. R. R.
Vancouver, B. C., shipments route:
From Tacoma, via Western Steam Navigation Co.'s steamers "North Pacific" or "Mainlander."
Wahpeton, N. D., shipments route:
Via Union Pacific C. M. & St. P. at Council Bluffs.
Wichita, Kas., shipments route:
Via C. R. I. & P. Ry. at Fort Worth, Texas.
Winnipeg shipments route:
Via Union Pacific R. R., C. St. P. M. & O. Ry., care Northern Pacific R. R. at St. Paul.

On business moving through New Orleans to points shown below, routing as indicated must be observed:
Atlanta, Ga.:
Via Louisville & Nashville R. R., Western Ry. of Alabama, and Atlantic & West Point R. R.
Asheville, N. C.:
Via New Orleans & Northeastern Ry. and Alabama Great Southern Ry.
Charleston, S. C.:
Via Louisville & Nashville R. R., Georgia R. R.
Jacksonville, Fla.:
Via Louisville & Nashville R. R. and Plant system.
Macon, Ga.:
Via Louisville & Nashville R. R., Western Ry. of Alabama, and Central of Georgia Ry.
Mobile, Ala.:
Via Louisville & Nashville R. R.

1306 Montgomery, Ala.:
Via Louisville & Nashville R. R.
Savan-ah, Ga.:
Via Louisville & Nashville R. R., and Plant system.

Preferred Delivering Lines.

On traffic to the following points, when shipped by the parties named, the delivering line or lines, as shown, *must be used.*

Destination.	Preferred delivery.	When shipped by—
Austin, Tex...	Int. & Gt. Nor. R. R.....	So. Cal. Fruit Exch.
Albany, N. Y.	Delaware & Hudson Co...	Earl Fruit Co.
Aberdeen, S. D.	C. M. & St. P. Ry.....	Porter Bros. Co.
Aberdeen, Ind., for Moulton & Ridel.	C. C. C. & St. L. (Big Four).	So. Cal. Fruit Exch.
Atlanta, Ga...	Southern Ry.....	Do.
Baltimore, Md.	Penna. lines.....	Earl Fruit Co.
Do. ...	B. & O. R. R.....	So. Cal. Fruit Exch.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Do.	A. Gregory.
Birmingham, Ala.	Southern Ry.....	So. Cal. Fruit Exch.
Boston, Mass.	Fitchburg Ry.....	A. Gregory.
Do. ...	Do.	West. Am. Fruit Co.
Do. ...	Do.	O. L. Lyon & Sons.
Do. ...	Do.	So. Cal. Fruit Exch.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Fitch. and Boston & Maine.	Redlands O. G. Assn.
Buffalo, N. Y..	Wabash Ry. or L. S. & M. S.	So. Cal. Fruit Exch.
Do. ...	L. S. & M. S. Ry.....	Fay Fruit Co.
" (G. B. Long & Co.)	Do.	All shippers.
Canadian points.	Grand Trunk Ry.....	So. Cal. Fruit Exch.
Chat-anooga, Tenn.	Southern Ry	So. Cal. Fruit Exch.
Chicago, Ill...	C. M. & St. P. or C. & N. W. Ry.	Earl Fruit Co.
Do. ...	C. M. & St. P. Ry.....	So. Cal. Fruit Exch.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Ill. Cent., C. & N. W., or C. M. & St. P.	Ruddock, Trench & Co.
Do. ...	C. & N. W. Ry.	Porter Bros. Co.
Do. ...	Ill. Central R. R.....	Redlands Ecl. O. Assn.

(Also see Canadian points specifically mentioned herein, alphabetically.)

Destination.	Preferred delivery.	When shipped by—
Cincinnati, O.	Penna. R. R	So. Cal. Fruit Exch.
Do.	C. C. C. & St. L. (Big Four)	Fay Fruit Co.
Do.	Penna. R. R	Earl Fruit Co.
"(Hamer & Co.)	Do.	Ruddock, Trench & Co.
Cincinnati, O.	B. & O. R. R	A. Gregory.
Columbus, O.	Penna. lines	Do.
Do.	B. & O. S. W	So. Cal. Fruit Exch.
Do.	Pan Handle	I. L. Lyon & Sons.
Cleveland, O.	Nickle Plate	A. Gregory.
Do.	Do.	I. L. Lyon & Sons.
Do.	Do.	West Am. Fruit Co.
Do.	Do.	So. Cal. Fruit Exch.
Do. (A. C. Blair & Co.)	C. C. C. & St. L. or Nickle Plate.	A. G. Stearns.

1308

Denver, Colo.	Union Pacific R. R	Fay Fruit Co.
Do.	Do.	Redlands O. G. Ass'n.
Do.	Do.	A. Gregory.
Do.	Do.	Redlands Ecl. O. G. Ass'n.
Do.	Do.	N. W. Blanchard & Co.
Des Moines, Iowa.	C. R. I. & P. Ry	So. Cal. Fruit Exch.
Do.	C. G. W. Ry	Ruddock Trench Co.
" (Davidson Bros.)	Do.	Covina O. G. Ass'n.
" (C. C. Taft & Co.)	C. R. I. & P. Ry	Ruddock Trench & Co.
Detroit, Mich.	Grand Trunk or Mich. Central.	So. Cal. Fruit Exch.
Do.	Grand Trunk Ry	Fay Fruit Co.
Do.	Mich. Central Ry	I. L. Lyon & Sons.
Do.	Do.	West Am. Fruit Co.
Evansville, Ind.	Louisville & Nashville R. R.	A. Gregory.
Erie, Pa	L. S. & M. S. Ry	A. Gregory.
Fort Wayne, Ind.	Wabash R. R	Do.
Grand Rapids, Mich, (A. J. Brown Seed Co.)	Grand Rapids & Indiana Ry.	Do.
Galesburg, Ill.	Burl. route	I. L. Lyon & Sons.
Do.	Do.	So. Cal. Fruit Exch.
Grand Island, Neb.	Do.	Do.

Destination.	Preferred delivery.	When shipped by—
Guelph, Ont..	Grand Trunk Ry.....	Do.
Hartford, Conn.	Central New England.....	Redlands O. G. Ass'n.
Hamilton Ont.	Grand Trunk Ry.....	So. Cal. Fruit Exch.
Do. ...	Pan Handle.....	Ruddock Trench Co.
Do. ...	Do.	Earl Fruit Co.
1309		
Hamilton, Ont.	Pan Handle.....	A. Gregory.
Do.....	Do.	C. K. Short.
Do. (Amicon Bros.)	Do.	Fay Fruit Co.
Indianapolis, Ind.	C. C. C. & St. L. or Vandalia.	So. Cal. Fruit Exch.
Jackson, Mich.	Mich. Central.....	So. Cal. Fruit Exch.
Kansas City, Mo.	M. K. & T. Ry	Fay Fruit Co.
Keene, N. H..	Boston & Maine R. R.....	West Am. Fruit Co.
Kalamazoo, Mich.	Mich. Central Ry.....	Do.
Lafayette, Ind.	Wabash.....	A. Gregory.
" (Pottlitzner Bros)	C. C. C. & St. L.....	So. Cal. Fruit Exch.
La Salle, Ind..	Burl. route.....	So. Cal. Fruit Exch.
Lima, O.....	Lake Erie Western Ry.....	Covina O. G. Ass'n.
Do.	Penna. Ry.....	Altschul Bros. & Co.
Lincoln, Neb..	Burl. route or C. R. I. & P..	So. Cal. Fruit Exch.
Louisville, Ky.	B. & O. S. W. Ry.....	Do.
London, Canada.	Mich. Central Ry.....	Fay Fruit Co.
London, Ont..	Mich. Central from Chicago.	C. G. Steele.
Milwaukee, Wis.	C. M. & St. P. Ry.....	Fay Fruit Co.
Do. ...	C. & N. W. Ry.....	I. L. Lyon & Sons.
Do. ...	C. M. & St. P. Ry..... ..	So. Cal. Fruit Exch.
Minneapolis, Minn.	C. M. & St. P.....	Do.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do. or C. St. P. M. & O. Ry.	Porter Bros. Co.
" (Kneen & Co.)	C. St. P. M. & O. Ry.....	Ruddock Trench & Co.

Destination.	Preferred delivery.	When shipped by—
Montreal, Que.	Grand Trunk Ry.....	So. Cal. Fruit Exch.
1310		
New York city.	Erie R. R.....	C. J. Shepherd.
Do. ...	Do.	So. Cal. Fruit Exch.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Do.	Porter Bros Co.
Do. ...	Do.	Ruddock, Trench & Co.
New York city.	Erie R. R.....	Earl Fruit Co.
Do. ...	Do.	Redlands O. G. Assn.
Do. ...	Do.	I. L. Lyon & Sons.
Do. ...	B. & O. R. R.....	A. Gregory.
Do. ...	Do.	A. B. Devine.
" (Westfall Fruit Co.)	Do.	A. G. Stearns.
Omaha, Neb..	U. P., C. R. I. & P. or B. & M. R.	So. Cal. Fruit Exch.
Do. ...	Do.....	Fay Fruit Co.
Do. ...	Burl. route.....	Redlands O. G. Ass'n.
Do. ...	Do.	I. L. Lyon & Sons.
Oshkosh, Wis.	C. & N. W. Ry.....	Do.
Ottawa, Ont...	Canada Atlantic.....	Ruddock Trench Co.
Do. (Ottawa F. & P. Co.)	Grand Trunk Ry.....	J. A. Maddock.
Peoria, Ill.....	Burl. route.....	So. Cal. Fruit Exch.
Philadelphia, Pa.	B. & O. R. R.....	Do.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Sandiland Bros.
Do. ...	Penna. lines.....	Fay Fruit Co.
Do. ...	Do.	I. L. Lyon & Sons.
1311		
Philadelphia,	Lehigh Valley R. R.....	Ruddock, Trench & Co.
Do. ...	Philadelphia & Reading...	Porter Bros. Co.
Do. ...	Do. ...	Earl Fruit Co.
Do. ...	Do. ...	Redlands Ecl. O. G. Assn.

Destination.	Preferred delivery.	When shipped by—
Pittsburgh, Pa.	Penna. Co	So. Cal. Fruit Exch.
Do. ...	Penna. lines	Earl Fruit Co.
Do. ...	Do.	Fay Fruit Co.
Do. ...	Do.	Ruddock Trench Co.
Do. ...	Do.	A. Gregory.
Do. ...	Do.	Moulton & Greene.
Do. ...	Do.	Sandiland Bros.
Do. ...	Do.	Sparr Fruit Co.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do.	Salisbury Fruit Co.
Do. ...	Do.	F. H. Edwards.
Pueblo, Colo..	D. & R. G. Ry	N. W. Blanchard & Co.
Rockford, Ill..	Ill. Central Ry	Redlands O. G. Assn.
Rochester, N. Y.	West Shore Ry	Fay Fruit Co.
Do. ...	Lehigh Valley R. R	Earl Fruit Co.
Scranton, Pa..	D. L. & W. Ry	So. Cal. Fruit Exch.
Sioux City, Ia.	U. P. R. R	Do.
Springfield, Mass.	Boston & Albany R. R	Earl Fruit Co.
" (H. J. Perkins).	Do.	Walter S. Newhall.
"	N. Y. N. H. & H. R. R	San Antonio Fruit Exch.
St. Louis, Mo..	St. L. & San Francisco R. R.	Ruddock, Trench & Co.
Do. ...	Mo. Pac. or Burlington	So. Cal. Fruit Exch.
Do. ...	Burl. or M. K. & T	Fay Fruit Co.
1312		
St. Paul, Minn.	C. M. & St. P	So. Cal. Fruit Exch.
Do. ...	C. St. P. M. & O. or C. M. & St. P.	Porter Bros. Co.
Do. ...	C. St. P. M. & O	Fay Fruit Co.
" (Kneen & Co)	Do.	Ruddock Trench & Co.
Syracuse, N. Y.	N. Y. C. & H. R. R	Ruddock Trench & Co.
Toledo, O	L. S. & M. S. Ry	So. Cal. Fruit Exch.
Toronto, Can.	Can. Pac. Ry	Do.
Do. ...	Grand Trunk Ry	Redlands O. G. Ass'n.
Utica, N. Y...	D. L. & W. Ry	Earl Fruit Co.
Washington, D. C.	B. & O. R. R	So. Cal. Fruit Exch.
Do. ...	Penna. lines	Earl Fruit Co.
Waterloo, Ia..	C. G. W. Ry	So. Cal. Fruit Exch.
Wheeling, W. Va.	B. & O. R. R	Do.

Destination.	Preferred delivery.	When shipped by—
Winona, Minn.	Burl. route	West Am. Fruit Co.
Worcester, Mass.	Fitchburg Ry	Do.
Winnipeg, Manitoba,	Northern Pacific Ry	I. L. Lyon & Sons.
Youngstown, O.	B. & O. R. R.	Do.

1313 Preferred Deliveries by Switching Service.

Pages 8, 9, 10, and 11 show shippers' preferred delivering lines in various cities. At points shown below, such preferred deliveries may be effected by switching service; therefore, to prevent a line from receiving more than its allotment, business may be routed via another line and desired delivery be given.

Point.	Lines that will perform switching service for each other.
Kansas City, Mo...	St. Louis & San Francisco railroad. Missouri, Kansas & Texas Ry. Chicago, Rock Island & Pacific railway.
St. Louis, Mo.....	Wabash railroad. St. Louis, Iron Mountain & Southern Ry. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago & Alton Ry.
Cincinnati, O.....	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis railway.
Buffalo, N. Y.....	Grand Trunk railway. Lake Shore & Michigan Southern Ry. Michigan Central railway. New York, Chicago & St. Louis Ry. (New York Central & Hudson River R. R. perform- all switching service for the three lines last named; hence those lines have no deliveries in Buffalo, excepting in the New York Central's freight depot or team track. Lines therefore performing switching would be the N. Y. C. & H. R. R. R. and the Grand Trunk railway.)

1314 NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 5, 6 and 7) or "Delivering

line instructions" (see pages 8, 9, 10, and 11) must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

NOTE 4.—Do not route any citrus fruit shipments made by A. C. Stearns via the St. Louis & San Francisco railroad. Please pay particular attention to this.

It is apprehended that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the best you can in line with these instructions—which, however, are liable to be changed at any time.

When but a few cars are shipped, all may be routed one day via one route, via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line; but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Please acknowledge receipt by return mail.

Yours truly, G. A. PARKYNS.

CC—Mr. Wm. Sproule, San Francisco.
CC—Mr. W. G. Neimyer, Chicago.
CC—Mr. W. K. McAllister, Denver.

1315 B.

B3-13259 Confidential.

NOTE.—*This letter cancels all previous routing and delivering lines instructions.*

LOS ANGELES, CAL., March 31st, 1903.

Mr. W. S. Pollock, agent, Los Angeles.
Mr. D. A. Bruce, agent, Colton.
Mr. C. J. Ellis, agent, Sacramento.

Routing of Citrus Fruit Shipments South of Mojave and Santa Barbara (Latter Inclusive).

GENTLEMEN: Referring to Trans-continental Freight Bureau eastbound special tariff No. S. R. 297, effective January 21st, 1902, announcing:

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee."

Also, to Trans-continental Freight Bureau circular No. 21 effective January 1st, 1900, advising that agents will not accept shipping

orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon:

Agents will therefore not accept routing, but initial carrier will route each car from point of origin to destination, except as provided in Southern Pacific Company's circular No. 105, bearing date Los Angeles, August 20th, 1902.

Diversions in transit will be permitted only by consent of initial carrier, who will thereon designate new routing when diversion necessitates change therein.

1316 You will, therefore, commencing April 10th, 1903, please route Trans-continental shipments of citrus fruit originating on this company's lines south of Mojave and Santa Barbara (latter inclusive) for the present as follows:

First, deduct business destined to non-competitive points on the following lines:

Santa Fe system.
Union Pacific railroad.
Rio Grande Western railroad.
G. H. & S. A., (including New Orleans).
Rock Island.

Also business destined points in Texas and Louisiana, for which specific routing is provided in circular No. 459, of Oct. 2nd, 1902.

The remainder route:

Via Ogden	90 per cent.
Via El Paso	10 per cent.

Business via Ogden route:

Via Union Pacific railroad	70 per cent.
Via Rio Grande Western railroad	30 per cent.

Union Pacific System business route:

Via Chicago & North Western railway	50 per cent.
Via Illinois Central railroad	30 per cent.
Via Chicago, Milwaukee & St. Paul railroad	20 per cent.

Rio Grande Western proportion route:
(Except Chicago business, routing for which see below.)

Via Denver & Rio Grande, Burlington & Missouri River R. R. and Chicago, Burlington & Quincy R. R.	40 per cent
Via Denver & Rio Grande R. R., Missouri Pacific R. R. and Chicago & Alton R. R.	30 per cent

1317 Via Colorado Midland Ry., Chicago, Rock Island & Pacific R. R. and Chicago & Great Western from St. Joseph, Mo. 30 per cent

NOTE.—Chicago business route from Missouri river:

Via Chicago & Northwestern Ry	50 per cent.
Via Illinois Central R. R	30 per cent.
Via Chicago, Milwaukee & St. Paul R. R	20 per cent.

Business destined east of Chicago, route from Chicago:

Via Michigan Central Ry.....(to Buffalo)...	20 per cent.
Via New York, Chicago & St. Louis Ry. do. ...	20 per cent.
Via Lake Shore & Michigan Southern Ry. do. ...	15 per cent.
Via Grand Trunk Ry..... do. ...	10 per cent.
Via Pennsylvania lines.....	15 per cent.
Via Baltimore & Ohio R. R.....	15 per cent.
Via Grand Trunk Ry. (long haul).....	5 per cent.

Business destined east of Buffalo, route from Buffalo:

Via New York Central & Hudson River R. R...	30 per cent.
Via West Shore Ry.....	30 per cent.
Via Delaware, Lackawanna & Western R. R.....	20 per cent.
Via Lehigh Valley R. R.....	20 per cent.

Colorado common points business, route:

Via Union Pacific railroad.....	50 per cent.
Via Rio Grande Western R. R.....	50 per cent.

Rio Grande Western Railroad proportion, route:

Via Colorado Midland Ry.....	50 per cent.
Via Denver & Rio Grande R. R.....	50 per cent.

NOTE.—Give Rio Grande Western, Denver & Rio Grande and Colorado Midland railways their allotment as nearly as may be in trainloads.

1318 Business via El Paso, route:

NOTE.—It is expected that specific routings (see pages 4, 5, and 6) will give to the El Paso route its full proportion of 10 per cent.

Specific Routings.

Atlanta, Ga., shipments route:

Care the Nashville, Chattanooga and St. Louis Ry. at Memphis.

Baltimore shipments route:

Via Baltimore & Ohio R. R., when via Chicago	66⅔ per cent.
Via Pennsylvania lines.....	33⅓ per cent.

Boston shipments route:
In care Boston & Maine Ry. (Fitchburg division,) at Rot
terdam Jct. Mechanicsville, Shelburne Falls, or, when
routed via Canadian Pacific Ry., at Newport.
When via the Wabash R. R. route care the Canadian Pacific
Ry., care the Boston & Maine Ry. at Newport Jct.
Cincinnati shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big
Four).
Columbus, Ohio, shipments route:
Via Pittsburgh, Cincinnati, Chicago & St. Louis Ry.
Duluth shipments route:
Via the Union Pacific R. R., Chicago, St. Paul, Minneapolis
& Omaha Ry.
Fargo, S. D., shipments route:
Via Union Pacific R. R., Chicago, Milwaukee & St. Paul Ry.
at Council Bluffs.
Fort Dodge, Ia., shipments route:
Via Union Pacific R. R. to Council Bluffs, thence via Illinois
Central R. R.
1319 Grand Forks, N. D., shipments route:

Via Northern Pacific R. R.....	50 per cent
Via Great Northern Ry.....	50 per cent

Indianapolis, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis R. R. (Big
Four), through Peoria or St. Louis but not via Chicago.
Lafayette, Ind., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry., (Big
Four).
Milwaukee, Wis.. shipments route:
Should always be routed care Chicago & Northwestern Ry.
or Chicago, Milwaukee & St. Paul Ry. from Missouri river
Louisville, Ky., shipments route:
Via Cleveland, Cincinnati, Chicago & St. Louis Ry. (Big
Four).
Minneapolis shipments route:
Via Ogden, Union Pacific R. R. and Chicago, St. Paul
Minneapolis & Omaha Ry.
Nashville, Tenn , shipments route:
Care Nashville, Chattanooga & St. Louis Ry. at Memphis
New England points shipments route:
Do not route shipments destined New England points via
Wabash, West Shore and Boston & Albany Rys. If moving
Wabash and West Shore, Boston & Maine routing may be
given to points reached via that line.
New York City shipments route:
Via Erie railroad from Buffalo, but not from Chicago o
Chicago junctions.

Philadelphia shipments route:

Via Pennsylvania lines..... ..... 100 per cent.

(B. & O. R. R., and B. & O. S. W. Ry. will receive their proportion as shown under heading "Preferred deliveries.")

1320 Pittsburgh, Pa., shipments route:
Via Pennsylvania lines.
Salt Lake City, Utah, shipments route:

Via Oregon Short Line..... 50 per cent.
Via Rio Grande Western..... ..... 50 per cent.

Scranton, Pa., shipments route:
Via Erie railroad from Buffalo care Delaware & Hudson Ry.
Sioux City, Iowa, shipments route:
Via Union Pacific R. R.
St. Paul shipments route:
Via Ogden, Union Pacific R. R. and Chicago, St. Paul, Minneapolis & Omaha Ry.
St. Joseph, Mo., shipments route:

Via Union Pacific R. R. and St. Joe & Grand Island Ry..... ..... 50 per cent.
Via Chicago, Rock Island & Pacific and St. Joe & Grand Island Ry..... ..... 50 per cent.

Troy, N. Y., shipments route:
From Buffalo, via New York Central & Hudson River R. R.
Vancouver, B. C., shipments route:
From Tacoma, via Western Steam Navigation Co.'s steamers "North Pacific" or "Mainlander."
Wahpeton, N. D., shipments route:
Via Union Pacific R. R., Chicago, Milwaukee & St. Paul, at Council Bluffs.
Wichita, Kas., shipments route:
Via Chicago, Rock Island & Pacific Ry. at Fort Worth, Texas.
Winnipeg shipments route:
Via Union Pacific R. R., Chicago, St. Paul, Minneapolis & Omaha Ry., care Northern Pacific R. R. at St. Paul.

1321 On business moving through New Orleans to points shown below, routing as indicated must be observed:
Atlanta, Ga.:
Via Louisville & Nashville R. R., Western Ry., of Alabama, and Atlanta & West Point R. R.
Asheville, N. C.:
Via New Orleans & Northeastern Ry. and Alabama Great Southern Ry.
Charleston, S. C.:
Via Louisville & Nashville R. R., Georgia R. R.

Jacksonville, Fla.:
Via Louisville & Nashville R. R., and Plant system.
Macon, Ga.:
Via Louisville & Nashville R. R., Western Ry. of Alaban and Central of Georgia Ry.
Mobile, Ala.:
Via Louisville & Nashville R. R.
Montgomery, Ala.:
Via Louisville & Nashville R. R.
Savannah, Ga.:
Via Louisville & Nashville R. R., and Plant system.

1322 Preferred Delivering Lines.

On traffic to the following points, when shipped by the partie named, the following line or lines, as shown, *must be used.*

Destination.	Preferred delivery.	When shipped by—
Aberdeen, Ind. for Moulton & Ridel.	C. C. C. & St. L. (Big Four)	Cal Fruit Agency.
Aberdeen, S. Dak.	C. M. & St. P. Ry.....	Porter Bros. Co.
Albany, N. Y.	Delaware & Hudson Co...	Cal. Fruit Agency.
Atlanta, Ga...	Southern Ry.....	Do.
Austin, Tex...	Int. & Gt. Nor. R. R.....	Do.
Baltimore, Md.	B. & O. R. R.....	Do.
Birmingham, Ala.	Southern Ry.....	Do.
Boston, Mass.	Fitchburg Ry. and B. & M.	Do.
Do. ...	Fitchburg Ry.....	I. L. Lyon & Sons.
Do. ...	Do. and B. & M.....	Redlands O. G. Assn.
Buffalo, N. Y.	L. S. & M. S.....	Cal. Fruit Agency.
" (G. B. Long & Co.)	Do.	All shippers.
Canadian points.	Grand Trunk Ry.....	Cal. Fruit Agency.

(Also see Canadian points specifically mentioned herein alphabetically.)

Chattanooga, Tenn.	Southern Ry.....	Cal. Fruit Agency.
Chicago, Ills..	C & N. W. and C M St P. or Ill. Cent.	Do.
Do. ...	C. & N. W. Ry.....	Porter Bros. Co.
Do. ...	Ill. Central R. R.....	Redlands O. G. Assn.

Destination.	Preferred delivery.	When shipped by—
Cincinnati, O.	Penna. R. R	Cal. Fruit Agency.
Cleveland, O.	N. Y. C. & St. L	Do.
Do. ...	Nickle Plate	I. L. Lyon & Sons.
Do. ...	C. C. C. & St. L. shipments for	A. C. Blair & Co.

1323

Columbis, Pa.	P. & R. Ry. shipments for..	S. H. Weaver.
Columbus, O.	Big Four from St. Louis...	Cal. Fruit Agency.
Denver, Colo.	Union Pacific R. R	Do.
Do. ...	Do.	Redlands O. G. Ass'n.
Do. ...	Do.	Redlands Ecl. O. G. Ass'n.
Do. ...	Do.	N. W. Blanchard & Co.
Des Moines, Ia.	C. R. I. & P. Ry	Cal. Fruit Agency.
" (Davidson Bros.)	C. G. W. Ry	Covina O. G. Ass'n.
Detroit, Mich..	Grand Trunk Ry	Rubidoux Fruit Co.
Do. ...	Do. or Mich. Cent	Cal. Fruit Agency.
Do. ...	Mich. Central	I. L. Lyon & Sons.
Evansville, Ind.	Louisville & Nashville	Cal. Fruit Agency.
Erie, Pa	L. S. & M. S. Ry	Do.
Fort Wayne, Ind.	Wabash R. R	Do.
Fort Worth, Tex.	T. & P. Ry	Do.
Galesburg, Ill.	C. B. & Q. Ry	Do.
Do. ...	Burl. route	I. L. Lyon & Sons.
Grand Rapids, Mich. (A. J. Brown Seed Co.).	Grand Rapids & Indiana Ry.	Cal. Fruit Agency.
Grand Island, Neb.	Burl. route	Do.
Guelph, Ont..	Grand Trunk Ry	Do.
Hartford, Conn.	Central New England	Redlands O. G. Ass'n.
Hamilton, Ont.	Grand Trunk Ry. & Pan Handle.	Cal. Fruit Agency.
Do. ...	Pan Handle	C. K. Short.
Do. ...	Do. shipments for	Amicon Bros.
Indianapolis, Ind.	Vandalia or Big Four from St. Louis.	Cal. Fruit Agency.

1324

Destination.	Preferred delivery.	When shipped by—
Jackson, Mich.	Mich. Central	Cal. Fruit Agency.
Kansas City, Mo.	C. R. I. & P. Ry	Do.
Kalamazoo, Mich.	Michigan Central	Do.
Keene, N. H..	Boston & Maine R. R	Do.
Lafayette, Ind.	Wabash R. R	Do.
" (Pottlitzner Bros.)	C. C. C. & St. L	Do.
La Salle, Ill...	Burl. route	Do.
Lima, Ohio...	Lake Erie Western Ry	Covina O. G. Ass'n.
Do. ...	Penn. R. R	Altschul Bros. & Co.
Lincoln, Neb..	Burl. route or C. R. I. & P. Ry.	Cal. Fruit Agency.
Louisville, Ky.	B. & O. or Ill. Cent	Do.
London, Canada.	Mich. Central	Do.
London, Ont..	Do. from Chicago	C. C. Steele.
Memphis, Tenn.	I. M. or Ill. Cent	Cal. Fruit Agency.
Milwaukee, Wis.	C. M. & St. P. from K. C. or Omaha.	Do.
Do. ...	C. & N. W. Ry	T. L. Lyon & Sons.
Minneapolis, Minn.	C. M. & St. P. Ry	Cal. Fruit Agency.
Do. ...	Do.	Covina O. G. Ass'n.
Do. ...	Do. or C. St. P. M. & O. Ry.	Porter Bros. Co.
Do. ...	C., St. P. M. & O. Ry. shipments for	Kneen & Co.
Montreal, Que.	Grand Trunk Ry	Cal. Fruit Agency.
Nashville, Tenn.	L. & N	Do.
New Haven, Conn.	N. Y., N. H. & H. R. R. R. via Newburg or Harlem River.	Do.
New Orleans, La.	Sunset route	Do.
New York.....	Erie R. R	Do.

1325

Destination.	Preferred delivery.	When shipped by—
New York ...	Erie R. R.....	C. J. Shepherd.
Do. ...	Do.	Covina O. G. Assn.
Do. ...	Do.	Porter Bros. Co.
Do. ...	Do.	Redlands O. G. Assn.
Do. ...	Do.	I. L. Lyon & Sons.
Do. ...	Do.	Rubidoux Fruit Co.
Do. ...	B. & O. R.. R.....	E. B. Devine.
Omaha, Neb..	U. P. R. R. or B. & M.....	Cal. Fruit Agency.
Do. ...	Burl. route.....	Redlands O. G. Assn.
Do. ...	Do.	I. L. Lyon & Sons.
Oshkosh, Wis.	C. & N. W. Ry.....	Do.
Ottawa, Ont...	Grand Trunk Ry.....	Cal. Fruit Agency.
Do. ... (Ottawa F. & P. Co.)	Do.	J. A. Maddock.
Peoria, Ills....	C. B. & Q. at Kansas City or C R I & P.	Cal. Fruit Agency.
Philadelphia, Pa.	B. & O. R. R.....	Do.
Do. ...	Do.	Covina O. G. Assn.
Do. ...	Do.	Sandiland Bros.
Do. ...	Do.	Rubidoux Fruit Co.
Do. ...	Do. shipments for.....	Wm. Weinert.
Do. ...	Penna. lines.....	I. L. Lyon & Sons.
Do. ...	Phila. & Reading.....	Porter Bros. Co.
Do. ...	Do.	Redlands Ecl. O. G. Assn.
Pittsburgh, Pa.	Penna. Co.....	Cal. Fruit Agency.
Do. ...	Penna. lines.....	Sandiland Bros.
Do. ...	Do.	Sparr Fruit Co.
Do. ...	Do.	Covina O. G. Assn.
Do. ...	Do.	Salisbury Fruit Co.

1326

Pittsburg, Pa.	Penna. lines.....	F. H. Edwards.
Providence, R. I.	N Y N H & H R R R. via Newburg.	Cal. Fruit Agency.
Pueblo, Colo..	D. & R. G. Ry.....	N. W. Blanchard & Co.
Rockford, Ill.	Ill. Cent. Ry.....	Redlands O. G. Assn.
Rochester, N. Y.	West Shore Ry. & Lehigh Valley.	Cal. Fruit Agency.
Scranton, Pa..	D. L. & W. at Buffalo.....	Do.
" (Chandler & Short)	D. & H. Ry.....	Do.

Destination.	Preferred delivery.	When shipped by—
Sioux City, Ia.	U. P. R. R.	Do.
Springfield, Mass.	Boston & Maine Ry.	Do.
" (H. J. Perkins)	Boston & Albany R. R.	Walter S. Newhall
"	N. Y. N. H. & H. R. R. R.	San Antonio Fruit Exch
St. Louis, Mo.	I. M. or C. B. & Q.	Cal. Fruit Agency.
St. Paul, Minn.	C. M. & St. P. R. R.	Do.
Do.	Do. or C. St. P. M. & O. Ry.	Porter Bros. Co.
Do.	C. St. P. M. & O. Ry. shipments for	Kneen & Co.
Syracuse, N. Y.	N. Y. C. & H. R. R. R.	Cal. Fruit Agency.
Toledo, Ohio.	L. S. & M. S. Ry.	Do.
Terre Haute, Ind.	Vandalia	Do.
Toronto, Can.	Grand Trunk Ry.	Do.
Do.	Do.	Redlands O. G. Assn.
Utica, N. Y.	B. L. & W. Ry.	Cal. Fruit Agency.
Washington, D. C.	B. & O. S. W. Ry.	Do.
Waterloo, Ia.	C. G. W. or C. R. I. & P. Ry.	Do.
Wheeling, W. Va.	B. & O. R. R.	Do.
Wichita, Kas.	C. R. I. & P. Ry.	Do.
1327		
Winnipeg, Manitoba.	Northern Pacific Ry.	I. L. Lyon & Sons.
Winona, Minn.	Burl. route	Cal. Fruit Agency.
Worcester, Mass.	Fitchburg Ry.	Do.
Youngstown, O.	B. & O. R. R.	I. L. Lyon & Sons.

Preferred Deliveries by Switching Service.

Pages 7, 8 and 9 show shippers' preferred delivering lines in various cities. At points shown below, such preferred deliveries may be effected by switching service; therefore, to prevent a line receiving more than its allotment, business may be routed by another line and desired delivery be given.

Point.	Lines that will perform switching service for each other.
Kansas City, Mo...	St. Louis & San Francisco railroad. Missouri, Kansas & Texas Ry. Chicago, Rock Island & Pacific railway.
St. Louis, Mo.....	Wabash railroad. St. Louis, Iron Mountain & Southern Ry. St. Louis & San Francisco railroad. Missouri, Kansas & Texas railway. Chicago & Alton Ry.
1328 Cincinnati, O.....	Pennsylvania Company. Baltimore & Ohio railroad. Cleveland, Cincinnati, Chicago & St. Louis railway.
Buffalo, N. Y.....	Grand Trunk railway. Lake Shore & Michigan Southern Ry. Michigan Central railway. New York, Chicago & St. Louis Ry. (New York Central & Hudson River R. R. perform all switching service for the three lines last named; hence these lines have no deliveries in Buffalo, excepting in New York Central's freight depot or team track. Lines therefore performing switching would be the N. Y. C. & H. R. R. R. and the Grand Trunk railway.)

NOTE 1.—No line's allotment is to be increased through specific routings or preferred delivery instructions.

NOTE 2.—"Specific routings" (see pages 4, 5 and 6) or "Delivering line instructions," (see pages 7, 8 and 9) must be adhered to. Should they conflict, "Delivering line instructions" will prevail.

NOTE 3.—When a line is to perform delivery by simply switching service, shipments so handled are not to be considered as a portion of that line's allotment.

1329 NOTE 4.—Do not route any citrus fruit shipments made by A. G. Stearns via the St. Louis & San Francisco railroad. Please pay particular attention to this.

It is apprehended that it may be difficult for you to route this traffic on a percentage basis, as the cars move daily, to points east of Chicago and St. Louis, and, at times, to points west thereof; but you are to do the best you can in line with these instructions,—which, however, are liable to be changed at any time.

When but a few cars are shipped, all may be routed one day via one route, via another route the next day, and so on, but the result to be as above, as nearly as possible.

It should be obvious that business destined to non-competitive points, on some particular line, should be routed via that line, but if that road is not mentioned in the percentage routing, it should be given its shortest haul.

Please acknowledge receipt by return mail.

Yours truly, G. A. PARKYNS.

CC—Mr. Wm. Sproule, San Francisco.
CC—Mr. W. G. Neimyer, Chicago.
CC—Mr. W. K. McAllister, Denver.

1330 B.

B3-13259.

Los Angeles, April 18th, 1903.

Mr. W. S. Pollock, agent, Los Angeles, and
Mr. D. A. Bruce, agent, Colton.

Amendment to Our Routing Letter File Numbers as Above of March 31st.

Page 1, is hereby amended to read as follows:

"Referring to Trans-continental Freight Bureau east-bound special tariff No. S. R. 344, effective Dec. 1st, 1902, announcing:

"The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations hereinafter set forth."

Also, to Trans-continental Freight Bureau circular No. 21, effective January 1st, 1900, advising that agents will not accept shipping orders or other documents covering shipments of citrus fruit, if routing instructions are shown thereon.

Page 2, under heading, Rio Grande Western proportion route: add, "Allotment for Rio Grande Western, Denver & R. G. and Colo. Mid.," should in so far as possible be given them in train lots, same to be routed east of Denver when destination will permit via the same line as far east as possible to secure benefit of special service."

Page 4, specific routings, add,

Dayton, Ohio shipments:

Via the C. C. C. & St. L. Ry., (Big Four).

1331 Page 5, add:

Springfield, Ohio shipments route:

Via the C. C. C. & St. L. Ry., (Big Four).

Yours truly, G. A. PARKYNS.

CC—Mr. Wm. Sproule, San Francisco.
CC—Mr. W. G. Neimyer, Chicago.
CC—Mr. W. E. McAllister, Denver.
CC—Mr. G. W. Luce, San Francisco.

1332 Q. Have you the papers for the next year?
A. The last I gave you is for the current year.
Q. That is up to this time?
A. Yes sir.
Q. Have you with you, Mr. Parkyns, the table or instructions concerning the percentage of freight to be allowed to each of the connecting lines of the defendant railroads?
A. Do you mean the citrus fruit?
Q. Yes, on citrus fruit freight.
A. It is all shown in the papers already handed you.
Q. I am referring to the percentage of the freight on other shipments. Not the percentage of the business, the percentage of the freight.
A. You mean the division sheet?
Q. Division sheet.
A. No, I have not. You know they are issued by Mr. Countiss, the agent of the Trans-continental Freight Bureau.
Q. It is the issued duplicate to each member of the freight bureau?
A. Yes sir.
Q. So the copy produced by Mr. Barnwell is the same as that issued to the Southern Pacific?
A. Yes sir.

Mr. FLINT: You will obtain one if he desires it.
Mr. CALL: No, we have a copy in evidence. It was offered the other day, or offered today, I think.
Mr. NORTON: Today, yes.

By Mr. CALL:

Q. What are those other papers there, Mr. Parkyns?
1333 A. Here are the tariffs that you called for. They are the same as——
Q. Well, those are in evidence.
A. That is the circular which was referred to in those letters that I have already given you.
Q. Is this in evidence?
A. Well, they are referred to in these distribution sheets. So, to make these sheets complete, I brought along that copy.

Mr. CALL: I also offer a circular issued by the agent of the Trans-continental Freight Bureau, dated January 1, 1900.
Mr. VALENTINE: Number 21.
Mr. CALL: Number 21, to be marked Complainant's Exhibit 42.
The document last offered is as follows:

1334 Trans-continental Freight Bureau, Representing—

Atchison, Topeka & Santa Fe railway.
Burlington & Mo. River R. R. in Neb.
Chicago, Rock Island & Pacific R'y.

Denver & Rio Grande railroad.
Missouri, Kansas & Texas railway.
Missouri Pacific railway.
Oregon & California railroad.
Rio Grande Western railway.
St. Louis & San Francisco railroad.
St. Louis, Iron Mountain & Southern R'y.
Santa Fe Pacific railroad.
San Francisco & San Joaquin Valley R'y.
Southern California railway.
Southern Pacific Co. (Atlantic system).
Southern Pacific Co. (Pacific system).
Texas & Pacific railway.
Union Pacific railroad.

Circular No. 21. Effective January 1, 1900.

Instructions Regarding the Acceptance of Shipping Orders Coveri
Shipments of Citrus Fruit.

Trans-continental Freight Bureau east-bound special tariff N
S. R. 230, naming rates on citrus fruit, effective January 1, 19
provides:

"In guaranteeing the through rate named herein, the a
1335 solute and unqualified right of routing beyond its own t
minal is reserved to the initial carrier giving guaranty."

In compliance therewith, commencing January 1, 1900, age
will not accept shipping orders or other documents covering shi
ments of citrus fruit if routing instructions are shown there
Neither will agents accept verbal routing instructions therefor.

Initial carrier will route each car from point of origin to destin
tion, and diversions in transit will not be permitted except by co
sent of initial carrier, who will thereupon designate new routi
when diversion necessitates change therein.

W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
W. A. Bissell, ass't traffic manager,
Santa Fe system, San Francisco, Cal.
J. E. Gorman, general freight agent,
A. T. & S. F. R'y, Topeka, Kas.
E. Chambers, general freight agent,
Santa Fe Pacific R. R., S. F. & S. J. V. R'y, and So. Cal. R
Los Angeles, Cal.
Geo. H. Crosby, general freight agent,
Burlington & Mo. River R. R. in Nebraska,
Omaha, Neb.
H. Gower, ass't freight traffic manager,
C. R. I. & P. R'y, Chicago, Ill.
H. H. Embry, general freight agent,
C. R. I. & P. R'y, (lines west of Mo. riv.)
Topeka, Kas.

1336 W. C. Stith, general freight agent,
Mo. Pac. R'y, St. Louis, Mo.
A. S. Hughes, traffic manager,
D. & R. G. R. R. Denver, Colo.
Fred Wild, Jr., general freight agent,
D. & R. G. R. R., Denver, Colo.
C. Haile, freight traffic manager,
M. K. & T. R'y, St. Louis, Mo.
A. T. Drew, general freight agent,
M. K. & T. R'y, St. Louis, Mo.
J. W. Allen, general freight agent,
M. K. & T. R'y of Texas, Dallas, Tex.
S. H. Babcock, traffic manager,
R. G. W. R'y, Salt Lake City, Utah.
S. J. Henry, general freight agent,
R. G. W. R'y, Salt Lake City, Utah.
C. W. Bein, traffic manager,
So. Pac. Co. (Atlantic system).
New Orleans, La.
W. H. Masters, asst. traffic manager,
So. Pac. Co. (Atlantic system.)
New Orleans, La.
E. Hawley, asst. general traffic mgr.
So. Pac. Co., New York, N. Y.
Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pacific system and Oregon lines,) San Francisco, Cal.
A. D. Shepard, general freight agent,
So. Pac. Co. (Pacific system.)
San Francisco, Cal.
1337 C. H. Markham, gen. freight agent,
So. Pac. Co.'s lines in Oregon.
Portland, Ore.
G. W. Luce, asst. gen. frt. agent,
So. Pac. Co. (Pacific system),
Los Angeles, Cal.
F. D. Russell, general freight agent,
St. L. & S. F. R. R., St. Louis, Mo.
E. L. Sargent, general freight agent,
Texas & Pacific R'y, Dallas, Tex.
J. A. Munroe, freight traffic manager,
Union Pacific R. R., Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal., December 21, 1899.
(Auth. 542.)
Issued by R. H. Countiss, agent, 49 Second street San Francisco, Cal.
Approved:
A. D. SHEPARD,
Gen'l Freight Agt. S. P. Co.

1338 Q. What are those papers, Mr. Parkyns?

A. Circulars of instructions to agents in southern California pertaining to citrus fruit.

Q. May I see what they are?

A. (Documents handed to counsel.)

Q. May I just look through and see what those are? I don't want to unnecessarily burden the record with papers that don't belong there.

A. (Witness hands document to counsel.)

By Mr. FLINT:

Q. The file of letters that Mr. Call is now examining, I will ask you what that contains.

A. Letters from different shippers and consignees asking for special deliveries.

Q. And from officers of the company, in connection with the shipments?

A. Yes sir.

Q. It is a collection from files in your office?

A. Yes sir.

Q. How many files have you on this subject?

A. Oh, there are several hundred files.

Q. And after an examination of days you have——

A. I selected those, yes sir.

Mr. CALL: Well, that is all, Mr. Flint.

Mr. FLINT: Are those offered in evidence?

Mr. CALL: No, I don't want to load up the record with those.

1339 Cross-examination.

By Mr. FLINT:

Q. These papers that Mr. Call has just stated that he did not desire to offer in evidence were brought here by you under subpœna and the order?

A. Yes sir.

Q. I ask you to examine that?

A. I have done so.

Q. That circular was issued by Mr. Luce as assistant general freight and passenger agent?

A. Yes sir.

Mr. FLINT: We offer that.

Mr. CALL: Well, it is understood that the complainant objects to this evidence as not cross-examination, and as incompetent, immaterial and irrelevant, and reserves such objections to all offers made on cross-examination of this witness; and not in any manner explanatory of testimony offered in chief.

The document last offered is as follows:

1340 Circular No. 44.

Superseding Circular No. 37.

Southern Pacific Company.

(Pacific System.)

Los Angeles, Cal., Feb'y 27th, 1900.

To all agents in California south of Mojave and Elwood.

Gentlemen: It has been decided to allow shippers the privilege of placing on shipping orders or other documents, covering shipments of citrus fruit, their preference of certain cities or markets through which they desire cars to pass, providing there — two or more lines of railway competing for traffic between each of the various points specified.

You may, therefore, accept on shipping orders, in accordance with the above, the following notation:

"Would prefer this car pass through ——" naming points.

Should any point be indicated, not served by competing lines, you will please request shippers to omit same.

Yours truly,

G. W. LUCE,
A. G. F. & P. A., So. Pac. Co.

1341 The document last offered as above was marked Defendants' Exhibit No. 1.

By Mr. Flint:

Q. Mr. Parkyns, in accordance with that circular have the shippers been given the right to route fruit so as to pass through such towns as they desire, or cities?

A. Yes sir.

Q. In answer to Mr. Call's question, or that of Mr. Dunne, you stated that these percentage tables were prepared by the general freight and traffic manager. I will ask you if, as matter of fact, you have examined into that matter and found whether that is correct or not?

A. Yes. I would like to say that on looking into the matter I find that instead of the distribution sheets being issued in the general office, they were issued by the district freight agent, in Los Angeles.

Q. Were these percentage tables or distribution sheets prepared by the officers of the Southern Pacific Company without any combination or agreement with the connecting carriers?

A. Yes sir, so I understand.

Q. Did you have charge of the citrus fruit business yourself?

A. In charge of all business in this territory, but the details of it were given to the district freight agent.

Q. That was Mr.——
A. Mr. Ochiltree.
Q. And you personally didn't have charge of that matter?
A. No, I didn't handle it personally.
1342 Q. And these various communications that have been sent out over your signature were not, in fact, signed by you?
A. No.
Q. But by your authority?
A. Yes.
Q. And the distribution sheet was made by Mr. Ochiltree, the district freight agent?
A. Yes sir.

Mr. FLINT: I think that is all.
Mr. CALL: That is all, Mr. Parkyns.

GEORGE A. PARKYNS.

Whereupon the further taking of testimony on this hearing was adjourned, to be resumed on five days' notice by any party to the other parties.

1343 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern CaliforniaRailway Company, Defendants. } No. 1039.

Testimony taken on behalf of the defendants The Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, pursuant to notice and by agreement and consent of counsel, before Alton M. Cates, special examiner and commissioner in the above entitled cause, commencing on December 28th, 1903, at the office of the special examiner, room 308, Currier building, Los Angeles, California.

Present: Joseph H. Call, Esq., special assistant United States attorney, on behalf of the commission; E. F. Dunne, and Frank P. Flint on behalf of the Southern Pacific Company; and T. J. Norton, on behalf of the Atchison, Topeka & Santa Fe Railway Com-
1344 pany, the Santa Fe Pacific Railroad Company, and the Southern California Railway Company.

And thereupon the following proceedings were had:
Mr. NORTON: I should like to offer, as direct testimony, the cross-examination I made of Mr. Barnwell at a former time—put that in as part of our direct testimony. I have your consent?

Mr. CALL: Yes. Subject to all objections.

Mr. NORTON: Yes. In accordance with a stipulation heretofore entered into by the parties to the above entitled cause, the defendants The Atchison, Topeka and Santa Fe Railway Company, Southern California Railway Company and Santa Fe Pacific Railroad Company hereby offer in evidence the following extracts from the testimony of witnesses called on behalf of the complainant before the United States Interstate Commerce Commission in a case entitled "Consolidated Forwarding Company, a corporation, complainant, *v.* The Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railway Company, and Southern California Railway Company, corporations, defendants," and also in the case entitled "The Southern California Fruit Exchange, a corporation, complainant, *v.* Southern California Railway Company, Santa Fe Pacific Railway Company, Atchison, Topeka and Santa Fe Railway Company, and Southern Pacific Company, corporations, defendants:"

Mr. CALL: It will be understood that all the testimony taken on this hearing is subject to all valid objections.

Mr. NORTON: The same old stipulation, I understand.

Mr. CALL: Yes.

Mr. NORTON: That we had at the beginning.

1345 The extracts of testimony last offered are as follows:

Testimony of A. H. Naftzger, President and Manager Southern California Fruit Exchange.

Beginning on page 18 and ending on page 20, as follows:

Mr. NAFTZGER: So far as we are concerned, I do not think we ever paid tariff on refrigeration.

Mr. HUNSAKER: What discount or allowance or percentage of discount or allowance was made to the shippers by the refrigerator cars?

Mr. NAFTZGER: The allowances were variable. I should say all the way from ten to twenty five per cent.

Com'r CLEMENTS: Do you mean of the tariff rates?

Mr. NAFTZGER: Of the published refrigerator tariffs.

Com'r CLEMENTS: You mean the refrigerator price?

Mr. NAFTZGER: Yes sir.

Mr. STEVENS: Is this prior to 1897 that you are speaking of?

Mr. NAFTZGER: I should say prior to the season of 1899.

Mr. HUNSAKER: The seasons of 1898 and 1899.

Mr. NAFTZGER: The refrigerator season did not begin until April, 1899.

Mr. HUNSAKER: Well, by this rate of $60, $75 and $90, you mean that that was the tariff published by the car line companies for the use of the cars under refrigeration?

Mr. NAFTZGER: Well, I should say for the refrigeration. I can not say it was for the use of the car.

Mr. HUNSAKER: That was the amount you paid in addition t
the regular railroad tariff rates, was it not?

1346 Mr. NAFTZGER: Yes.

Mr. HUNSAKER: The entire amount?

Mr. NAFTZGER: Yes sir.

Mr. HUNSAKER: And on those rates they gave you a discoun
ranging from ten to twenty per cent.?

Mr. NAFTZGER: Yes, sir; that is, on the refrigeration tariff. I d
not mean on the railroad tariff, but on the refrigeration tariff.

Com'r CLEMENTS: Did you say from ten to twenty or twenty-fiv
per cent.?

Mr. NAFTZGER: Well, I should say twenty-five. I do not unde
take to be absolutely accurate on the amount.

Mr. HUNSAKER: What car line made those allowances or di
counts prior to 1899?

Mr. NAFTZGER: All the car lines to the best of my recollectio
that we ever used in our business.

Mr. HUNSAKER: State whether or not the Continental Fruit Ex
press did.

Mr. NAFTZGER: We never made shipments in the Continenta
Fruit Express cars when we could avoid it and I never had an
arrangement with them.

Mr. HUNSAKER: How as to the Armour or Fruit Growers Ex
press?

Mr. NAFTZGER: We usually had a traffic arrangement with th
Fruit Growers Express for some sort of an allowance and whatever w
could catch at the time.

Mr. HUNSAKER: And the Santa Fe Refrigerator Line?

Mr. NAFTZGER: Yes sir; the same as to the other car lines whe
they were in here.

1347 Also beginning on p. 21 and ending on p. 23, as follows:

Mr. HUNSAKER: What was the custom prior to January 1st las
of the Southern Pacific Company and the Southern California Rail
way Company and the other roads composing the Atchison, Topek
& Santa Fe system as to allowing the shipper to direct the routin
of the cars?

Mr. NAFTZGER: We have always been allowed to select our rout
over any line in the published tariffs.

Mr. HUNSAKER: How long has that condition of affairs existed

Mr. NAFTZGER: Ever since I have had anything to do with th
business.

Mr. HUNSAKER: Has there been any change in that respect by
the railroad companies, if so, what and when?

Mr. NAFTZGER: Since the first of January last they have denied
us that privilege, the initial line assuming the right and actually
routing to destination.

Mr. HUNSAKER: State whether or not in view of your experienc
the privilege of directing the routing is necessary to the shipper?

Mr. NAFTZGER: I think it is necessary to the best results.

Mr. HUNSAKER: State your reasons for that opinion?

Mr. NAFTZGER: I shall speak particularly of our own business. Our system of marketing is to sell the fruit in the markets, not here. We send our fruit forward to be sold on the market condi-

1348 tions as they exist at the time of the delivery. The different sections of the country take different classes of fruit. Besides, we are compelled to test the markets. The markets that we think today will take the fruit on arrival may be filled up with competitor's fruit or other conditions may prevail to make it impossible for us to avail ourselves of that particular market. If the shipper has control or knows the routing of his business or is able to direct the routing of his business he can accommodate himself to those different markets in better shape than if the routing is in the hands of somebody else. More important, however, is that frequently we can make sale if we can make a given delivery and we can not make sales without. It is true that in a very large measure under the present order of things we are permitted to have the final destination, but not entirely so. Again, our experience has been that the shipments require attention in transit, such as ventilation, when they are not under refrigeration, round housing in cold weather, prompt movement and prompt diversions when they are necessary, without which in fact we can not market the fruit at all, and our experience has been that we could get that prompt service on the part of the connecting lines if they were under the fear of losing the business if they did not give it. Under the present order of things, of course, we have no hold upon the connecting lines whatever and no means of forcing good service, prompt service or attention to our shipments in transit or anything of the sort.

Mr. HUNSAKER: Are there any other reasons you have to offer?

Mr. NAFTZGER: I think I have stated the principal reasons.

1349 Also beginning on p. 88 and ending on p. 89 as follows:

Mr. HERRIN: You say you have noticed this season more loss of fruit from decay than in past years. Do you attribute that to climatic cause in whole or in part, or do you attribute it wholly to the heavier loading?

Mr. NAFTZGER: I do not think it is entirely attributable to the heavier loading. I think there may be some other causes.

Mr. HERRIN: Has not this been a rather unusual season?

Mr. NAFTZGER: I think the crops have ripened earlier than usual.

Mr. HERRIN: It has not been so long ripening?

Mr. NAFTZGER: No sir.

Mr. HERRIN: Fruit maturing in a quicker time might not stand shipment as well as the fruit that has taken the usual time for ripening—that might be so, might it not?

Mr. NAFTZGER: Yes sir.

Also beginning on p. 117 and ending on p. 119 as follows:

Mr. HERRIN: But when you were running the Overland Fruit Despatch you collected the full tariff, you say?

Mr. NAFTZGER: Yes.

Mr. HERRIN: Well, now you are referring to since that time?

1350 Mr. NAFTZGER: I said so far as the people that I represent we never had paid the full refrigerator tariff, and the shipments that were made by the Overland Fruit Despatch were for the benefit of the people that I represented—Southern California Fruit Exchange—so that they did not pay the tariff then.

Mr. HERRIN: Even then?

Mr. NAFTZGER: No sir.

Mr. HERRIN: Well, then what did you mean when you were telling me all the time that you collected it?

Mr. NAFTZGER: We did collect it, and paid it back to them. That is what I said.

Mr. HERRIN: Well, that is rather important. How much did you pay back to them?

Mr. NAFTZGER: I cannot give you the figures at this moment.

Mr. HERRIN: Did you pay back as much as 10 per cent. of what you collected?

Mr. NAFTZGER: We paid back to them half the difference between the tariff and the cost of refrigeration.

Mr. HERRIN: Half the difference between the tariff and the cost of refrigeration?

Mr. NAFTZGER: Yes.

Mr. HERRIN: That would be half of the profits?

Mr. NAFTZGER: Yes.

Com'r YEOMANS: He testified this morning that he paid from 10 to 25 per cent.

Mr. LAMBERTSON: He claimed this morning that the three companies paid over a certain amount; but had not said what he or his company paid until now.

1351 Mr. HERRIN: What he testified to this morning was as to past seasons. Now in last season, 1898–9 you say that you paid from 10 to 25 per cent. less than the refrigeration charges?

Mr. NAFTZGER: That is what I said.

Mr. HERRIN: You did not pay it all in and get a rebate back?

Mr. NAFTZGER: That is what we did.

Mr. HERRIN: You did it that way, did you?

Mr. NAFTZGER: To the best of my recollection, that is the way it was done.

Mr. HERRIN: You have paid the full tariff since January 1st, have you not, this year, refrigeration tariff?

Mr. NAFTZGER: I think so.

Mr. HERRIN: Have you got anything back?

Mr. NAFTZGER: No sir.

Mr. HERRIN: Isn't that the trouble in this matter?

Mr. NAFTZGER: That is one of them.

Mr. HERRIN: How do you account for the fact that you are not getting back any of these rebates? What has been done to change that practice?

Mr. NAFTZGER: Well, I account for it on the ground that the refrigerator lines told me that the initial lines have cut their mileage so close that they cannot afford to pay any rebates any more.

Mr. HERRIN: Is that all they told you?

Mr. NAFTZGER: They told me further that the movement of the cars was so slow that the mileage was very small.

Mr. HERRIN: Is that all they told you?

1352 Mr. NAFTZGER: I think those are the main reasons they assigned for not being willing to give up anything.

Mr. HERRIN: Didn't they tell you further that the initial carriers were doing the routing themselves now, and that they could not deal with the eastern lines, and get allowances, or anything out of which to pay rebates?

Mr. NAFTZGER: No, I don't believe any of them said that to me.

Mr. HERRIN: Did you ever hear anything about like that?

Mr. NAFTZGER: I have heard from the railroads that the car lines have been practicing that.

Also beginning on p. 121 and ending on p. 122 as follows:

Mr. HERRIN: * * * Now, you say the allowances or rebates now, or at least before January 1st, 1900, were 10 to 25 per cent. How have you been fixing those rebates, as to whether it should be 10, 15 or 25 per cent.—just haphazard, the best arrangement you could make?

Mr. NAFTZGER: The best arrangement we could make.

Mr. HERRIN: Did you have any schedule or tariff of rebates, or did you take each case and do the best you could?

Mr. NAFTZGER: We had an understanding with the car lines what we were to get off.

Mr. HERRIN: Did you have anything to do with the routing when you were getting those rebates?

Mr. NAFTZGER: Yes, I think we did—certain we did.

1353 Mr. HERRIN: Did the matter of routing cut any figure with the amount of rebates you got?

Mr. NAFTZGER: Do not think it did.

Mr. HERRIN: No connection whatever with it?

Mr. NAFTZGER: No sir.

Mr. HERRIN: Not the slightest?

Mr. NAFTZGER: For several years I do not think it had the slightest.

Mr. HERRIN: For several years; why do you put in "for several years"? Did it ever?

Mr. NAFTZGER: I will say that there was a time when the question of routing did enter in.

Mr. HERRIN: Well, how did it?

Mr. NAFTZGER: The car lines would say to us, if you go via certain lines—these lines or those—giving us rather a wide range, they could allow us about so much.

Mr. HERRIN: If you go via this line we can allow you so much, if you go via that line we can allow you so much more.

Mr. NAFTZGER: I think there were differentials, some years ago, but I think there has been nothing of that kind for three or four years, to my recollection.

Mr. HERRIN: What other inducement could there be to pay a rebate, except as the shipment was routed one way or another?

Mr. NAFTZGER: Well, the refrigerator lines, I assume, considered their margin of profit on this refrigeration was sufficient to give up something.

1354 Also beginning on p. 133 and ending on p. 136 as follows:

Mr. LAMBERTSON: Do you know of any instance where the Earl Fruit Company had such an advantage? Can you state any shipments? You can answer that.

Mr. NAFTZGER: I think he had in every shipment that he made in his own car.

Mr. LAMBERTSON: But you cannot specify one shipment where he has thrown a car in ahead?

Mr. NAFTZGER: I don't make any exception; they are all alike.

Mr. LAMBERTSON: You are not able to state where the Earl Fruit Company by means of superior knowledge which it had through the Continental Fruit Express, was able to throw a car in ahead of any shipper and break the market?

Mr. NAFTZGER: I am not able to state a case in which they did do it.

Mr. LAMBERTSON: Now, as a matter of fact the Southern California Fruit Exchange is a growers' association, is it?

Mr. NAFTZGER: Yes sir.

Mr. LAMBERTSON: It has no capital?

Mr. NAFTZGER: No sir.

Mr. LAMBERTSON: It owns no line of cars?

Mr. NAFTZGER: No sir.

Mr. LAMBERTSON: And it has no money with which to buy a line of cars?

Mr. NAFTZGER: No sir.

1355 Mr. LAMBERTSON: And it has never tendered to any one of these railway companies a line of cars to be operated?

Mr. NAFTZGER: No sir.

Mr. LAMBERTSON: Because it did not have them, and did not have any money with which to buy them?

Mr. NAFTZGER: No sir.

Mr. LAMBERTSON: Now one of these complaints here is in the name of the Southern California Fruit Exchange. It makes this complaint. Now, as a matter of fact it never has made any ship-

ments in the C. F. X. cars, or the cars of the Continental Fruit Express?

Mr. NAFTZGER: The Southern California Fruit Exchange itself?

Mr. LAMBERTSON: Yes sir.

Mr. NAFTZGER: No sir, I don't think the Southern California Fruit Exchange loaded any cars.

Mr. LAMBERTSON: In the C. F. X. cars?

Mr. NAFTZGER: No sir, I don't think it did or in any other cars.

Mr. LAMBERTSON: Is it not a shipper then?

Mr. NAFTZGER: No sir, not in that sense.

Mr. LAMBERTSON: Well, in what sense is it a shipper?

Mr. NAFTZER: In that it acts for the other exchanges as a marketing agent.

Mr. LAMBERTSON: Well, do you know whether any of the other exchanges have shipped in the C. F. X. car-?

Mr. NAFTZGER: Yes, they have occasionally when they could not get anything else.

Mr. LAMBERTSON: So that your company, the complainant,
1356 or people here or people represented by them, do not use these cars at all?

Mr. NAFTZGER: Not if they can avoid it.

Mr. LAMBERTSON: So they have never been prejudiced in any way?

Mr. NAFTZGER: Yes, when they were compelled to use these cars.

Mr. LAMBERTSON: Well, you say that in a general way, but do not know that to be true?

Mr. NAFTZGER: Well, I say that in a general way, yes.

Mr. LAMBERTSON: So that when you filed this complaint, of the Southern California Fruit Exchange, in which you allege you have been discriminated against, and been improperly treated, and that the Continental Fruit Express and the Earl Fruit Company has an advantage over you, you make that on behalf of somebody else, who has been injured and not on behalf of the company you represent?

Mr. NAFTZGER: Well, the company which I represent is made up of the growers who pack this fruit and put it into the cars.

Mr. LAMBERTSON: But they do not use these cars?

Mr. NAFTZGER: They do not when the transportation companies will furnish them something else.

Also beginning on p. 142 and ending on p. 144 as follows:

Mr. LAMBERTSON: Now at the time you operated this line of cars, you were a shipper yourself?

1357 Mr. NAFTZGER: No sir, my fruit was handled through the Riverside Fruit Exchange,

Mr. LAMBERTSON: Well, indirectly.

Mr. NAFTZGER: Yes, sir, I was a grower.

Mr. LAMBERTSON: It all went on those cars, didn't it?

Mr. NAFTZGER: Well, no, I do not think we made all of our ship-

ments. Don't think we had enough cars to make all our exchange shipments. I think we used other cars.

Mr. LAMBERTSON: You were president of the Riverside Fruit Exchange at that time?

Mr. NAFTZGER: No, I do not believe I was. I think I ceased be be president of the Riverside Fruit Exchange in the early spring of 1895, but I would not like to be positive on that subject. I think I did.

Mr. LAMBERTSON: It didn't occur to you at all improper at time time that the Southern California Fruit Exchange should be a stockholder in the car company and agent for fruit growers and shippers throughout the State, did it?

Mr. NAFTZGER: Well, the Southern California Fruit Exchange was not exactly a stockholder, but was a beneficiary.

Mr. LAMBERTSON: It had half the stock, didn't it?

Mr. NAFTZGER: It held it in escrow.

Mr. LAMBERTSON: Whom did it hold it for?

Mr. NAFTZGER: It held it for the benefit of the members of the exchange—growers connected with the exchange.

1358 Mr. LAMBERTSON: So that it really held stock and owned to a certain extent and operated a car company, and at the same time was a shipper?

Mr. NAFTZGER: To a certain extent, yes sir.

Mr. LAMBERTSON: Well, did it occur to you at that time that that was highly improper, and that it gave you an advantage over all your competitors?

Mr. NAFTZGER: I don't think it did give us an advantage over all our competitors.

Mr. LAMBERTSON: Some of them?

Mr. NAFTZGER: Some of them, possibly.

Mr. LAMBERTSON: But the enormity of that never struck you until lately?

Mr. NAFTZGER: Well, I don't know that I can say that the enormity of the proposition has hit me very hard yet.

Also beginning on p. 146 and ending on p. 147 as follows:

Mr. HERRIN: You said rapid transit was necessary where you refrigerated these cars. Is that necessary then?

Mr. NAFTZGER: Not particularly necessary except to get the fruit into market in reasonable time. It is not of vital importance.

Mr. HERRIN: Don't you in some instances hold your cars for a day or two in a place so as to get information as to where you want to divert them?

Mr. NAFTZGER: Yes sir.

1359 Mr. HERRIN: Hold them sometimes as much as three or four days?

Mr. NAFTZGER: I think we did sometimes.

Mr. HERRIN: You can divert your cars all right now, can't you?

Mr. NAFTZGER: At present in pretty good shape, yes sir.

Mr. HERRIN: Don't you in some cases give the destination of your car, at say Omaha, and then before you get to Omaha, tell them to divert to Chicago?

Mr. NAFTZGER: Frequently, yes sir.

Mr. HERRIN: And then when you get to Chicago, tell them to divert to some point farther east? You do that three or four times, don't you?

Mr. NAFTZGER: Yes sir. We seldom do it more than once.

Mr. HERRIN: That is a very great advantage to you, that diverting?

Mr. NAFTZGER: It is absolutely necessary in the marketing of the crop in my opinion.

Also beginning on p. 154 and ending on p. 159 as follows:

Commissioner CLEMENTS: When did this rebating practice begin?

Mr. NAFTZGER: I don't know sir. It seems to have been here when I came.

Commissioner CLEMENTS: How far back? When was that?

1360 Mr. NAFTZGER: Well, I think my first experience must have been along about 1892 or 1893.

Commissioner CLEMENTS: It was in vogue here then and has been ever since?

Mr. NAFTZGER: Yes, until now.

Commissioner CLEMENTS: Until this year? After this conference you testified about; is that when it ceased?

Mr. NAFTZGER: No sir, there has not been anything this year; not within sight of me at least.

Commissioner CLEMENTS: Did it stop before that conference was held or afterwards?

Mr. NAFTZGER: There had been no refrigeration before that.

Commissioner CLEMENTS: Before this season?

Mr. NAFTZGER: No sir.

Commissioner CLEMENTS: So it has not applied to this year, as far as you know?

Mr. NAFTZGER: No sir, not so far as I know.

Commissioner CLEMENTS: When it was in vogue what determined whether the rebates should be 10%, 15%, 20% or 25%? Was there any rule about it?

Mr. NAFTZGER: I suppose it was the bearing-down qualities of the man who was getting it. I don't know.

Commissioner CLEMENTS: Was there any uniformity about it?

Mr. NAFTZGER: I don't think there was. It was not an open reduction.

Commissioner CLEMENTS: Did some people get it and some not?

1361 Mr. NAFTZGER: I think pretty nearly everybody got it that went after it.

Commissioner YEOMANS: Did you always go after it?

Mr. NAFTZGER: I did.

Commissioner CLEMENTS: Well, that was not governed by the amount of the charge that was fixed by the territorial groups?

Mr. NAFTZGER: Yes sir it was; there was a larger allowance on the long hauls than on the short hauls.

Commissioner CLEMENTS: Was it a percentage in all cases?

Mr. NAFTZGER: No sir, it was generally an even proposition of $5, $10, or $15, as the case might be.

Commissioner CLEMENTS: On a car?

Mr. NAFTZGER: Yes sir, an a car.

Commissioner CLEMENTS: How was it arranged for—by an understanding when the shipment was made that it was to be paid?

Mr. NAFTZGER: An understanding with the car line at the beginning of the season, that the use of those particular cars would secure that allowance on the refrigeration.

Commissioner CLEMENTS: The understanding was had between the shipper and the car line?

Mr. NAFTZGER: Yes sir.

Commissioner CLEMENTS: Was it taken off before the freight was paid?

Mr. NAFTZGER: No sir, it was in the shape of a refund after the tariff had been paid.

Commissioner CLEMENTS: Why was it done that way?

Mr. NAFTZGER: Well, that is the only way in which it could be done and not make an open reduction. If it were in the shape
1362 of a reduction of the tariff charge in the beginning, of course that would in effect be making an open rate.

Commissioner CLEMENTS: Well, the effect was the same?

Mr. NAFTZGER: It was, but it was not known to all shippers. Some of them got caught on the full rate, I presume.

Commissioner CLEMENTS: What was the objection to all shippers knowing it?

Mr. NAFTZGER: I suppose the car lines did not want to give it up when they did not have to.

Commissioner CLEMENTS: Was secrecy always enjoined about it by the car lines?

Mr. NAFTZGER: Yes sir, it was generally a confidential proposition.

Commissioner CLEMENTS: Who was it paid back by?

Mr. NAFTSGER: The car lines.

Commissioner CLEMENTS: Over all the roads?

Mr. NAFTZGER: The railroads did not have anything to do with it so far as the shipper was concerned.

Commissioner CLEMENTS: No matter what road it went over?

Mr. NAFTZGER: No, sir, I said there was a time when the rebate on the refrigeration was affected somewhat by the routing, but that has not been the case for several years.

Commissioner CLEMENTS: Was it paid by the railroad or car line?

1363 Mr. NAFTZGER: By the car line, but there was a time, as I have stated before, when the car lines, or some of them would pay something more back if the shipment traveled over certain lines.

Commissioner CLEMENTS: Do you mean certain initial lines or certain intermediate lines?

Mr. NAFTZGER: That usually had relation to the connecting lines; not the initial lines.

Commissioner FIFER: Did the car company dictate the terms to the eastern connections?

Mr. NAFTZGER: I assume they did, or to a certain extent. I do not personally know that.

Commissioner CLEMENTS: Did you ever understand from them why they had any reason to send it one way than another?

Mr. NAFTZGER: I don't think I did. It may have been the conveniences of their ice-house, or the difference in the cost of ice, or some private arrangement of their own. I don't think I ever had any direct information on that subject.

Also beginning on p. 168 and ending on p. 169 as follows:

Commissioner CLEMENTS: The corporation you represented—I believe you said it was a corporation?

Mr. NAFTZGER: Yes sir.

Commissioner CLEMENTS: When you were running those cars didn't own any railroad?

1364 Mr. NAFTZGER: No sir.

Commissioner CLEMENTS: Didn't own any cars?

Mr. NAFTZGER: No sir.

Commissioner CLEMENTS: And was organized for the sole purpose of leasing or renting cars to be used by it in behalf of the shipper, was that the nature of it?

Mr. NAFTZGER: Yes sir.

Commissioner CLEMENTS: Is that it?

Mr. NAFTZGER: Yes sir.

Commissioner CLEMENTS: The object of that I suppose was to get the mileage?

Mr. NAFTZGER: Yes sir, and the benefits of refrigeration.

Commissioner CLEMENTS: The profit of refrigeration?

Mr. NAFTZGER: Yes sir; save something.

Commissioner CLEMENTS: The mileage you say in some instances, for a time, it was as much as two cents a mile?

Mr. NAFTZGER: Yes sir.

Commissioner CLEMENTS: Were any commissions paid by connecting lines, intermediate lines or terminal lines, in addition to mileage?

Mr. NAFTZGER: Never, to us, to the best of my recollection.

Commissioner CLEMENTS: What advantage was there in routing then, in having any option about the routing then, if you did not get any advantage in rate or rebate?

Mr. NAFTZGER: Except as I have already said; it was an advantage to have shipments go over lines that would pay a cent a mile each way, instead of over roads that would pay ¾ of a cent a mile each way.

1365 Commissioner CLEMENTS: That was the same thing as rebates or commissions?

Also a part of page 174 as follows:

Commissioner CLEMENTS: Do you remember how much was allowed in any one settlement to any association or shipping agency, of any kind, for any given period?

Mr. NAFTZGER: Well, we always rendered a statement at the end of the month, on the cars refrigerated during the month, and got our settlement, and it would be the merest guess for me to undertake to say how much it was. I think it sometimes would amount to about $2000 or $3000.

Commissioner CLEMENTS: A month?

Mr. NAFTZGER: Yes sir, a month.

Also beginning on p. 177 and ending on p. 184 as follows:

Mr. HERRIN: Did you ever receive any allowance or rebate in any case where there was no refrigeration?

Mr. NAFTZGER: Yes sir.

Mr. HERRIN: Well, in what case?

Mr. NAFTZGER: Oh! a good many cases.

Mr. HERRIN: Well, what did the refrigerator car owner pay the rebate out of in that case?

Mr. NAFTZGER: I don't know sir; I did not ask him where he got the money.

Mr. CLEMENTS: Did you get the two cents per mile—you got that whether there was refrigeration or not?

1366 Mr. NAFTZGER: Yes sir; that had no relation to the refrigeration.

Commissioner CLEMENTS: Did you receive this rebate where there was no refrigeration, in every case, from the refrigerator company?

Mr. NAFTZGER: Yes sir, from the refrigerator company.

Commissioner CLEMENTS: Did you ever receive it in any instance from the railroad?

Mr. NAFTZGER: Well, I cannot say absolutely that I never did.

Commissioner CLEMENTS: Do you know whether you did or not?

Mr. NAFTZGER: I think, sir, that I did.

Commissioner CLEMENTS: Well, when was that?

Mr. NAFTZGER: In the year '97 or '98, I think.

Commissioner CLEMENTS: Whom did you receive that from?

Mr. NAFTZGER: Don't remember exactly who I received it from.

Commissioner CLEMENTS: What company?

Mr. NAFTZGER: I know who I made the arrangement with.

Commissioner CLEMENTS: Well, whom did you make the arrangement with?

Mr. NAFTZGER: I made the arrangement with the representative of what is known as the Clover Leaf.

Mr. HERRIN: Maple Leaf?

Mr. NAFTZGER: No sir, Clover Leaf.

Commissioner CLEMENTS: Well, what was his name?

Mr. NAFTZGER: Mr. Hosbury.

1367 Commissioner CLEMENTS: Where is his office?

Mr. NAFTZGER: Toledo.

Commissioner CLEMENTS: What is his position with the company?

Mr. NAFTZGER: I think he was known as the live stock agent.

Commissioner CLEMENTS: How was that paid? How many instances did you have with him where you had an arrangement for it, and received it?

Mr. NAFTZGER: Only one, I think.

Commissioner CLEMENTS: Was that on fruit?

Mr. NAFTZGER: That was on fruit:

Commissioner CLEMENTS: Oranges?

Mr. NAFTZGER: Oranges.

Commissioner CLEMENTS: Where were they consigned?

Mr. NAFTZGER: To eastern points, going over the Clover Leaf.

Commissioner CLEMENTS: About how many cars?

Mr. NAFTZGER: I can not tell you that.

Commissioner CLEMENTS: Do you know who they were consigned to?

Mr. NAFTZGER: They were always consigned to ourselves. We always consign our fruit to ourselves. It was always consigned to the Southern California Fruit Exchange.

Commissioner CLEMENTS: Well, how much was that rebate?

Mr. NAFTZGER: I can not tell you the amount per car at this moment.

1368 Commissioner CLEMENTS: Well, in gross?

Mr. NAFTZGER: I cannot give you the gross either.

Commissioner CLEMENTS: What per cent. was it of the tariff rate?

Mr. NAFTZGER: I think it was about $15 per car. That is a guess at the moment.

Commissioner CLEMENTS: Well, several cars?

Mr. NAFTZGER: Yes.

Commissioner CLEMENTS: How was that paid?

Mr. NAFTZGER: Paid in coin, I think.

Commissioner CLEMENTS: Paid in coin here.

Mr. NAFTZGER: Yes, I think so.

Commissioner CLEMENTS: Paid to you in person?

Mr. NAFTZGER: Paid to me.

Commissioner CLEMENTS: By him in person?

Mr. NAFTZGER: No sir, I don't think it was, but I cannot reca
at this moment who paid it.

Commissioner CLEMENTS: Well, can you furnish a statement fro
your books that will show the date of these shipments; the dates
rebates, how much was paid?

Mr. NAFTZGER: No, sir; I haven't got any books that will sho
that.

Commissioner CLEMENTS: Why didn't you have?

Mr. NAFTZGER: Well, it was one of those accounts that was not
interest as a relic.

Commissioner CLEMENTS: Were you advised or requested by hi
not to keep account of it?

Mr. NAFTZGER: Don't think I was.

Commissioner CLEMENTS: You knew that much yoursel
1369 How came you to make this arrangement with that agent
the Clover Leaf? Did he come to you or did you go to him

Mr. NAFTZGER: He came to me.

Commissioner CLEMENTS: Did he offer inducement by way of r
bate?

Mr. NAFTZGER: Yes sir, he did.

Commissioner CLEMENTS: In what year was that?

Mr. NAFTZGER: About two years ago, I think.

Commissioner CLEMENTS: When the shipment was made abou
two years ago?

Mr. NAFTZGER: Yes, sir.

Commissioner CLEMENTS: And when was the rebate paid? Ho
long afterwards?

Mr. NAFTZGER: I am sorry to say that most of it was not paid
Whatever was paid, was paid, I should say, within two or thre
months after the shipment was made.

Commissioner CLEMENTS: Why was not the balance paid?

Mr. NAFTZGER: I had no means of collecting it.

Commissioner CLEMENTS: Did he refuse to pay it?

Mr. NAFTZGER: Well, yes; it amounted to that; he didn't pay i

Commissioner CLEMENTS: Is there an understanding that he is t
pay it?

Mr. NAFTZGER: No sir, not with me.

Commissioner CLEMENTS: Well, have you any memorandum b
which you can indicate the dates and the points to which thos
shipments were made?

Mr. NAFTZGER: Why, yes sir; I could give you the points t
1370 which we made shipments over that line, but I could not giv
you any memorandum as to which ones had nothing paid o
them. There were not many of them. I don't remember ho
many, but only a few cars.

Commissioner CLEMENTS: Well, you can give us a memorandu
of all the shipments sent over that line during that year?

Mr. NAFTZGER: Yes, I can do that.

Commissioner CLEMENTS: Well, I wish you would do that.

Mr. LAMBERTSON: You say these rebates were paid over to the board of directors of the Southern California Fruit Exchange; was that kept by them?

Mr. NAFTZGER: Do you speak now of the refrigeration profits, or earnings of the car line?

Mr. LAMBERTSON: Well, say the earnings of the car line.

Mr. NAFTZGER: Yes sir; that was paid over to the various exchanges in proportion to the amount of their shipments in relation to the whole shipments; that is, it was divided pro rata among them.

Mr. LAMBERTSON: What was done with these rebates that were paid personally to you?

Mr. NAFTZGER: Disposed of in the same manner.

Mr. LAMBERTSON: Were they kept by you or turned over?

Mr. NAFTZGER: Turned over.

Mr. LAMBERTSON: Were they turned over to the board of directors or to the fruit exchanges?

1371 Mr. NAFTZGER: Turned over to the fruit exchanges to the best of my recollection.

Mr. LAMBERTSON: Are you sure of that?

Mr. NAFTZGER: You are speaking now of these refrigeration charges—rebates?

Mr. LAMBERTSON: I am speaking, for instance, about rebates, regarding which you have been asked by Judge Clements.

Mr. NAFTZGER: Oh, well, whatever there was was paid over to the exchanges that made the shipments, upon which the payments were made.

Mr. LAMBERTSON: All of it?

Mr. NAFTZGER: All of it.

Mr. LAMBERTSON: Is it true then that all this money that came out of and in connection with the cars, was turned over to these different exchanges?

Mr. NAFTZGER: As I have stated, half of the profits of the car line was turned over to the exchanges, according to the agreement.

Also beginning on p. 185 and ending on p. 186 as follows:

Commissioner CLEMENTS: When were these rebates by Armour & Company, and Davis, and Hubbard, you spoke of: what year?

Mr. NAFTZGER: Practically all years up to this for the last five or six years.

Commissioner CLEMENTS: Paid in the way you described a while ago?

1372 Mr. NAFTZGER: Yes sir:

Commissioner CLEMENTS: Is that true in respect to rebates paid on cars where there was no refrigeration, as well as where there was? You said a few moments ago, if I understood you, that these companies also paid rebates in the absence of refrigeration, when shipped in their cars.

Mr. NAFTZGER: Yes, I think the same thing was true.

Commissioner CLEMENTS: Are there any other railroads that paid them besides the Clover Leaf?

Mr. NAFTZGER: No sir; I do not recall any now.

Testimony of C. E. Maud, President Consolidated Forwarding Company.

Beginning on page 189 and ending on page 192, as follows:

Mr. HUNSAKER: State what the practice has been of those car lines with reference to refunding a part of the charges made for refrigeration?

Mr. MAUD: Well, as long as I have been in the business there has been a refund.

Mr. HUNSAKER: To what extent?

Mr. MAUD: Well, from a very small percentage up to 25 % of the refrigeration charges.

Mr. HUNSAKER: How much per car?

1373 Mr. MAUD: Well, it might be at a flat rate of say $15 per car.

Mr. HUNSAKER: To what points?

Mr. MAUD: I say a flat rate that would cover all shipments.

Mr. HUNSAKER: Do you mean an average?

Mr. MAUD: Yes.

Mr. HUNSAKER: Well, what is the maximum amount which you have been allowed in the way of a refund or rebate by refrigerator lines?

Mr. MAUD: $35.00.

Mr. HUNSAKER: And the minimum?

Mr. MAUD: $5.00.

Mr. HUNSAKER: To what points have you been allowed as high as $35.00.

Mr. MAUD: Why, that was east to the Atlantic seaboard.

Mr. HUNSAKER: Now, all of these companies made you that allowance prior to this season?

Mr. MAUD: No.

Mr. HUNSAKER: Well, which of them made the allowance?

Mr. MAUD: They all made some allowance.

Mr. HUNSAKER: How was the allowance paid, say of the Continental Fruit Express Co.?

Mr. MAUD: By eastern exchange.

Mr. HUNSAKER: With whom did you settle, or from whom did you receive it?

Mr. MAUD: I receive it per letter.

1374 Mr. HUNSAKER: And from the Fruit Growers' Express: from whom did you receive it?

Mr. MAUD: No, I don't think, if my memory serves me, that the Fruit Growers' Express name was on it at all.

Mr. HUNSAKER: From whom did you receive the refund representing the amount coming from the Fruit Growers' Express?

Mr. MAUD: Well, I received that, if I remember rightly, in person.

Mr. HUNSAKER: From whom?

Mr. MAUD: You are referring to the Fruit Growers' Express?

Mr. HUNSAKER: Yes.

Mr. MAUD: You mentioned prior to that the California Fruit Express

Mr. HUNSAKER: Continental Fruit Express?

Mr. MAUD: The Fruit Growers' Express, I received that in person.

Mr. HUNSAKER: From whom?

Mr. MAUD: I forget the young man's name now.

Mr. HUNSAKER: And from the Santa Fe Refrigerator Line, from whom did you receive the money?

Mr. MAUD: I received that generally by letter.

Also beginning on p. 203 and ending on p. 204 as follows:

Mr. HUNSAKER: Mr. Maud, with whom did you make your arrangement for rebates from the tariff charges of the C. F. X. Company?

1375 Mr. MAUD: What charges did you say, the refrigerator charges?

Mr. HUNSAKER: Yes.

Mr. MAUD: Edwin T. Earl.

Mr. HUNSAKER: Personally?

Mr. MAUD: Yes.

Mr. HUNSAKER: State what you know of your own knowledge as to Mr. Earl's connection with the C. F. X. Company and its management.

Mr. MAUD: Well, I don't know that he has any connection with the C. F. X. car line other than I have transacted business with him presumably for the C. F. X. car line; also by public report that Mr. Earl is the directing spirit of the C. F. X. car line.

Mr. HUNSAKER: You say you made the arrangement for rebates with Mr. Earl?

Mr. MAUD: I did.

Mr. HUNSAKER: Was that arrangement carried out by the C. F. X. Company?

Mr. MAUD: Yes sir.

Mr. HUNSAKER: Did you receive the rebates?

Mr. MAUD: I did.

Mr. HUNSAKER: What business has Mr. Earl been engaged in in southern California during the nine years you have been engaged in this citrus fruit business?

Mr. MAUD: He has been engaged in shipping oranges and lemons so far as I know.

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1376 Also beginning on p. 211 and ending on p. 218 as follows:

"EXHIBIT No. 4—MAUD."

The Atchison, Topeka & Santa Fe Railway System, President's Office.

CHICAGO, January 15th, 1900.

Mr. Charles E. Maud, president the Consolidated Forwarding Company, Riverside, California.

DEAR SIR: I have your favor of January 6th, which would have been sooner answered had it not been for my absence in the East.

I think you have placed a somewhat wrong construction upon my letter of December 29th, which was intended to be entirely frank. I did say that it was generally known that we did not own refrigerator cars enough to handle the business, and that it was therefore necessary to use other cars: I also stated that we could not permit other cars to be used.

You ask two questions, which to you seem pertinent: First, why we refuse to use cars other than those now in operation, and second, why do we compel the use of C. F. X. cars, while admitting that the ownership of these cars has in the past been illegitimately used to foster the business of one or more particular firms.

1377 Both of these questions are, to all intents and purposes, the same questions, and should be made the subject of one answer. Two years ago there were in use, in the handling of the citrus fruit business of California some four or five private car lines, in addition to the cars owned by this company. It is an open secret that these lines were in the habit of soliciting from our eastern connections a money consideration in return for their alleged influence upon the routing of business, and when such considerations were obtained it was the custom of those lines to divide the amount, to a greater or less extent with the shippers of the fruit. In some cases the owners of the car lines were also shippers of fruit, in which case whatever concessions they might be able to obtain from our eastern connections resulted to their advantage. The situation was chaotic, and resulted, as I believe, in a detriment to all concerned. It was certainly burdensome to the railroad companies, the tendency being to crowd into California more cars than could be used, as well as to compel us to use certain classes of cars to which there were serious objections.

We were not, at that time, prepared to invest the capital necessary for the purchase of a sufficient number of refrigerator cars to take care of all the business, and it was an open question whether, even if money were available, the investment would be a profitable one. You doubtless realize that the California fruit season lasts but a few months and that during all the rest of the year the refrigerator cars, unless diverted to other portions of the country must lie idle.

378 We could, however, make favorable arrangements with the owners of certain cars for their use during the orange season, ne cars being diverted during the summer months to traffic in the ulf States and elsewhere, in which we have no interest. We suc-eeded in making an arrangement with the owners of the C. F. X. and . G. E. cars, under which the amount of mileage we had heretofore aid was considerably reduced. It is true that the owners of the rs in one case were also considerable shippers of fruit. In fact, it my impression that at the time they bought a large percentage the crop, and that there was then no particular outcry against is method of doing business.

Whether we made a mistake or not, we entered in good faith into contract with the owners of these cars, whereby, in consideration reduced rates for the use thereof, we permitted them to increase eir equipment, and agreed to lease from them all the cars which might need and which we were unable to furnish ourselves. is contract was made in good faith, and cannot honorably be oken by us except by breach of contract on the part of the other rty. This explains why we are unable, rather than unwilling, to other cars.

When, in the early part of this shipping season, yourselves and ers made strenuous objection to being obliged to ship in this class car, we cast about for means which would enable us, while not lating our contract to neutralize any illegitimate advantage which owners of these cars might derive of shippers. We were de-termined to break up the practice which we believed they 9 had indulged in of selling the business handled in those cars to our eastern connections, and this we could only do by tak-the routing into our own hands, and notifying all such connec-s that any contracts or concessions made with or to the owners hese cars would be valueless, since we should pay no attention to tings. It seemed to me, and still seems, that this deprives the owners of any advantage over the shippers. The amount we for the use of these cars is not extravagant, in fact, it is doubt-should we own these cars whether the interest on the investment cost of maintenance, would not be a greater amount than we pay for the use of the cars.

beg to assure you that I am entirely in sympathy with you in endeavor to prevent the concentration of the citrus fruit indus-n the hands of any man, or set of men, and you may consider this sentiment has been put in as strong language as you se.

ou say that you have recently been subjected to a good deal of tyranny from our representatives in California, and cite, as an nce, that up to the beginning of this season we were in the t of furnishing you with the number of cars of oranges and ns leaving California daily; that, with a few days' notice, this nation was denied you, and that, upon your protest, the plan

was re-instated, giving not only the number of cars, but the destination of each individual car.

You must be aware that this, so far from being an act of "tyranny" was done in conformity with your wishes. We are quite
1380 willing to give or withhold the information as you may desire. Our original idea was that, as you objected to having Earl know what cars you shipped and where, we would deny him any information, which, of course, involved denying to you also. When you entered your protest, and stated that you must have the information, it only remained for us to give it to everybody. It is rather hard to charge us with tyranny because we have endeavored to meet your wishes.

We come now to the question of alleged injury to you, by reason of our decision to route the cars. I have already explained in detail the reasons which led us to take this position, and you will excuse me for remarking that, while I yield to your superior knowledge of the effect on your business, I am unable to see how you reach your conclusions.

When you ship a car from Riverside to Jamestown, New York, for instance, over our line, you know that it will go to Chicago over our line and presumably be delivered to the Erie road in Chicago as being the most direct line. You can always reach that car for diversion purposes at least until it has arrived in Chicago, and it seems to me it can be diverted as well, under present methods, as under those heretofore existing. The practice of diversions is a great expense and annoyance to the railroad company; but we are willing to place our facilities at your disposal, and do everything that can possible be done to meet your wishes in this regard. I do not think you will find the present method a hardship.

1381 You ask why we select the citrus industry alone in exercising our right to route freight for which we accept the responsibility as to through rates. The answer is that the right is one which we do not care to exercise except for our own protection, and for the general good morals on the part of both carrier and shipper; and should circumstances arise which should inject into other business the same conditions that have heretofore existed as to the citrus business, we should unquestionably desire to exercise our rights as to such other business. At the present time there seems to be no necessity for so doing.

We have nothing to conceal in this whole matter as to methods governing our conduct. We believe that the whole subject presented to an intelligent body of men would result in a verdict in our favor, and it is personally a subject of great regret to me that the shippers seem determined to regard as an unjustified aggression a course which we undertook in the endeavor to protect their interests.

Yours truly, E. P. RIPLEY.

Also beginning on p. 224 and ending on p. 228, as follows:

Mr. LOVETT: Where is this roundhousing and ventilation done, beyond this initial line, which you say is important to the shipper?

Mr. MAUD: Why, all along the whole route.

1382 Mr. LOVETT: Done on the initial line as well as the others?

Mr. MAUD: Certainly.

Mr. LOVETT: And in order that it may be properly done you think it is necessary that the shipper should have the privilege of routing?

Mr. MAUD: Along the whole line including the initial as well as the delivering line?

—. ——.

Mr. MAUD: Yes sir, decidedly.

Mr. LOVETT: Well, what other advantages? Is not the chief advantage the opportunity it gives to secure rebates from eastern lines?

Mr. MAUD: No sir; I should not say that was the chief.

Mr. LOVETT: It is one, is it not?

Mr. MAUD: Did you say from the lines east?

Mr. LOVETT: Of the car lines?

Mr. MAUD: Yes sir; it is a reason.

Mr. LOVETT: Is it not as a matter of fact, is not that the only substantial reason?

Mr. MAUD: Why no, certainly not. The arrival of our fruit in satisfactory condition is worth infinitely more than anything we could get from the car lines.

Mr. LOVETT: The arrival of it.

Mr. MAUD: The arrival of it in good condition and also rapid transit.

Mr. LOVETT: How long did you enjoy that right of routing the freight? Up to what time?

Mr. MAUD: Up to the end of last season.

Mr. LOVETT: Up to the end of last season? For how long

1383 up to that time?

Mr. MAUD: Until, if I remember rightly, the end of November.

Mr. LOVETT: Of '99?

Mr. MAUD: '99.

Mr. LOVETT: November, '99?

Mr. MAUD: Yes sir.

Mr. LOVETT: Now how much have you suffered since that time? Was it not the end of December, 1899? Didn't you have it up to the first of January this year?

Mr. MAUD: No, received nothing.

Mr. LOVETT: Did you not get notice in November that the right would be discontinued after the first of January, or on the first of January?

Mr. MAUD: I believe we did.

Mr. LOVETT: And it has been discontinued since the first of January?

Mr. MAUD: It has.

Mr. LOVETT: And the privilege was enjoyed during your experience prior to that time, the privilege of selecting?

Mr. MAUD: Yes sir.

Mr. LOVETT: Now in how many instances have you suffered since the first day of January on account of the failure to round house and ventilate your shipments?

Mr. MAUD: How many times?

Mr. LOVETT: Can you specify a single instance?

Mr. MAUD: Yes sir.

Mr. LOVETT: How many?

Mr. MAUD: I cannot call to mind just now how many, but
1384 there have been some.

Mr. LOVETT: About how many?

Mr. MAUD: Well, I don't know just how many.

Mr. LOVETT: Think there have been as many as three?

Mr. MAUD: Yes, I should think there had been more than three.

Mr. LOVETT: How many, four?

Mr. MAUD: I cannot call to mind exactly the number.

Mr. LOVETT: Can you call to mind a single instance?

Mr. MAUD: Not at this present time without looking up the records.

Mr. LOVETT: You cannot call to mind then a single instance since the privilege of selecting the route was taken from you where shipments controlled by you have suffered by failure to roundhouse or properly ventilate?

Mr. MAUD: Not at the present time.

Mr. LOVETT: Did ever any shipments made by you before the first of January when you had the right and privilege of selecting the route, suffer from failure to roundhouse or properly ventilate? Did you ever have any claim of that character before this year?

Mr. MAUD: Yes sir.

Mr. LOVETT: That was when you exercised the right of selecting the route?

Mr. MAUD: Yes sir.

1385 Also begining on p. 230 and ending on p. 231 as follows:

Mr. LOVETT: That does not answer the question. The question is whether or not the opportunity it gives the shipper to obtain rebates has any weight or any value in your estimate of the value of the privilege of selecting the route?

Mr. MAUD: Why, it has to a small extent.

Mr. LOVETT: Small extent?

Mr. MAUD: Yes, to the extent of the rebate.

Mr. LOVETT: To the extent of the rebate?

Mr. MAUD: Yes sir.

Mr. LOVETT: And that has run sometimes as high as $35 a car?

Mr. MAUD: Yes sir.

Mr. LOVETT: Has an influence to that extent?

Mr. MAUD: Yes sir.

Mr. LOVETT: You have not been getting any rebates since the privilege of selecting the route has been taken away from you, have you?

Mr. MAUD: No.

Mr. LOVETT: You got them prior to that time?

Mr. MAUD: Yes sir.

Also beginning on p. 232 and ending on p. 233 as follows:

1386 Mr. LOVETT: Now, you stated a moment ago that there was, in answer to questions of your counsel, you stated there was an undue preference resulting to your competitor, Mr. Earl, by the use of Earl's cars. What did you mean by that?

Mr. MAUD: Well, that his volume of business would naturally entitle him to better handling of the cars.

Mr. LOVETT: Is that what you mean by an undue preference resulting to Mr. Earle?

Mr. MAUD: Yes sir.

Mr. LOVETT: That his volume of business would entitle him to more consideration?

Mr. MAUD: Yes sir.

Mr. LOVETT: In what respect?

Mr. MAUD: Well, in the movement of his cars.

Mr. LOVETT: The movement or expediting by the railroad company?

Mr. MAUD: Yes sir.

Mr. LOVETT: Have you had any cause for complaint on that ground?

Mr. MAUD: Why, I only know as to the time some of our cars make. I could not state definitely that Earl's cars make better time, but naturally would suppose so.

Also beginning on p. 235 and ending on p. 236 as follows:

Mr. LOVETT: You don't know exactly what you meant in your statement on direct examination that the use of Mr. Earl's cars gave an undue preference over you, do you?

1387 Mr. MAUD: Well, I could not bring documentary proof.

Mr. LOVETT: Of what you meant?

Mr. MAUD: Yes.

Mr. LOVETT: Can you say what you meant? Can you explain it? Is not that just a term you heard used in connection with the interstate commerce act?

Mr. MAUD: Yes sir, it is.

Mr. LOVETT: You repeated what you had heard?

Mr. MAUD: Yes sir.

Mr. LOVETT: The railroad company since the complaint you made, referred to in your letter to Mr. Ripley, the railroad company

post daily a statement of all cars of fruit forwarded from this coast—from southern California.

Mr. MAUD: Yes, I believe they do.

Mr. LOVETT: That is for the information of every one?

Mr. MAUD: Yes sir.

Mr. LOVETT: It is for your information, as well as for the information of Mr. Earl?

Mr. MAUD: Yes, undoubtedly.

Also part of page 237 as follows:

Mr. LAMBERTSON: What was it you asked Mr. Ripley?

Mr. MAUD: We asked him to give us information as to the number of cars that left California daily over his road.

Mr. LAMBERTSON: Well, you always got that before that time.

1388 Mr. MAUD: No, it was shut off for a short period—stopped it.

Mr. LAMBERTSON: Do you get the destination of cars now from day to day, or simply the number of cars?

Mr. MAUD: I think we get the number of cars and the destinations.

Also beginning on p. 242 and ending on p. 243, as follows:

Mr. LAMBERTSON: Have you any objections to the C. F. X. car, as a car?

Mr. MAUD: No.

Mr. LAMBERTSON: It is a good car, is it not?

Mr. MAUD: Yes sir; it is a good car.

Mr. LAMBERTSON: Good as any on the road?

Mr. MAUD: Yes sir.

Mr. LAMBERTSON: Better, is it not?

Mr. MAUD: Well, I would not say it was better; I would say it was as good.

Mr. LAMBERTSON: So your only objection to it is that Mr. Earl is in some way, you think, a fruit shipper,—either the Earl Fruit Company, or Mr Earl, and may have some advantage over you? Isn't that your only objection to the car?

Mr. MAUD: Yes sir.

Mr. LAMBERTSON: Now you made no objection to the Earl Fruit Company as a shipper as long as you got rebates?

Mr. MAUD: No.

1389 Mr. LAMBERTSON: You did not make any objections as long as you got rebates?

Mr. MAUD: No, I did not.

Mr. LAMBERTSON: And so this idea that he has an undue advantage over you came into your head after the rebates was cut off?

Mr. MAUD: Yes sir; that is true.

Mr. LAMBERTSON: And then you sat down and wrote those letters to Ripley, because the rebates were cut off?

Mr. MAUD: Yes sir.

Also a part of page 247 as follows:

Mr. STEVENS: Now, so far as your shipments over the Santa Fe line are concerned, is it true, Mr. Maud, that you have been given practically the same routings that you had when you exercised that privilege yourself?

Mr. MAUD: No, not the same routings.

Mr. STEVENS: Practically the same; I said, substantially?

Mr. MAUD: Substantially.

Mr. STEVENS: In nearly every instance?

Mr. MAUD: Yes sir; but we could not select the route.

Mr. STEVENS: But they were the ones you had been in the habit of selecting, were they not?

Mr. MAUD: Oh, yes; undoubtedly.

Mr. STEVENS: And they were just as advantageous as any you had selected, were they not?

1390 Mr. MAUD: Yes sir.

Also beginning on p. 248 and ending on p. 249 as follows:

Mr. MAUD: The right to dictate which route our fruit shall go. If we have that right we can force the railroads to properly ventilate and refrigerate our fruit.

Mr. STEVENS: Do you know of any case where that was not done over those routes that were given you by the initial carrier?

Mr. MAUD: Yes, I know of an instance.

Mr. STEVENS: Where was that?

Mr. MAUD: A car going to Milwaukee.

Mr. STEVENS: Over what line, and at what point did this occur?

Mr. MAUD: It went over the Santa Fe.

Mr. STEVENS: Where did the failure to properly ventilate or attend to some other service occur?

Mr. MAUD: That has not been traced, I believe.

Mr. STEVENS: Would it have gone over the Santa Fe anyway?

Mr. MAUD: It might and it might not.

Mr. STEVENS: It would have naturally *have* gone over that line anyway?

Mr. MAUD: No, not of necessity.

Mr. STEVENS: When was that?

Mr. MAUD: I don't carry all this small data in my head.

1391 Mr. STEVENS: Do you think you were injured by the routing of the Santa Fe in that case?

Mr. MAUD: Why, no, I don't suppose I was.

Mr. STEVENS: Then you were not injured in the only instance in which you say you were injured?

Mr. MAUD: In that I have not the right to say. I cannot demand of the railroad.

Also beginning on p. 256 and ending on p. 258 as follows:

Commissioner CLEMENTS: Well, did you get a rebate on cars in which you shipped this fruit that were not iced?

Mr. MAUD: Yes sir.

Commissioner CLEMENTS: Whether there was any icing service, or icing charge, or not, you received the same flat rate of $15 per car?

Mr. MAUD: Oh, no; it was extra if the cars were refrigerated.

Commissioner CLEMENTS: Extra amount of rebate do you mean?

Mr. MAUD: Yes sir.

Commissioner CLEMENTS: How much in that case?

Mr. MAUD: To the best of my knowledge, it was $15; that would be altogether $30.

Commissioner CLEMENTS: You got $30 out of a shipment that was made when there was no refrigeration service at all?

Mr. MAUD: No, $15 then.

1392 Commissioner CLEMENTS: $15 then, and $30 when there was?

Mr. MAUD: Yes sir.

Commissioner CLEMENTS: I will ask you in that connection whether you received rebates from the railroads?

Mr. MAUD: No, I have never received any rebates from the railroad company.

Commissioner CLEMENTS: Did you seek these rebates, or were they offered by the agents of these companies?

Mr. MAUD: Why, I both sought them and they were tendered me.

Commissioner CLEMENTS: You sought one another about it?

Mr. MAUD: Yes sir; I think we did.

Also beginning on p. 259 and ending on p. 260 as follows:

Commissioner FIFER: Now, when you get a rebate, where does that rebate go? Does it go into your pocket, or does it go into the pockets of the man who grows the fruit?

Mr. MAUD: It is distributed to the company.

Commissioner FIFER: Yes, but I want to know who gets the benefit of that rebate; whether it is the middleman or the man who grows the fruit?

Mr. MAUD: The middleman gets it.

1393 Testimony of Samuel H. Westfall—Fruit Shipping Business.

Beginning on page 274 and ending on page 276 as follows:

Mr. HUNSAKER: Did you have to pay anything for the use of the ventilator cars from Sacramento to Ogden?

Mr. WESTFALL: Nothing.

Mr. HUNSAKER: This $35 charge included the entire trip?

Mr. WESTFALL: It included the entire cost of transportation outside of the regular freight rate. It included the cost of transferring the fruit from one car into another at Ogden.

Mr. HUNSAKER: How long did that arrangement continue, Mr. Westfall?

Mr. WESTFALL: It continued for one deciduous fruit season only.

Mr. HUNSAKER: Since then how have you transported your fruit?

Mr. WESTFALL: Since we have used the same method—that is, ventilating the fruit—in Fruit Growers' Express refrigerator cars—ventilator and refrigerator cars—as far as Ogden principally, and refrigerating from there east.

Mr. HUNSAKER: And what rate have you paid?

Mr. WESTFALL: We have paid a flat rate to Atlantic seaboard points of $50 per car, with a less rate to Chicago and points
1394 west of Chicago. The difference would vary from $5 to $15 discount on points west; I do not remember exactly what they were.

Mr. HUNSAKER: Did you receive any rebate or allowance on those rates from the car lines?

Mr. WESTFALL: Two years ago there was an additional allowance, small allowance.

Mr. HUNSAKER: What was it?

Mr. WESTFALL: It was paid for the privilege of dictating the route.

Mr. HUNSAKER: And what was the amount of that allowance?

Mr. WESTFALL: In the neighborhood of $7 per car; I do not remember exactly.

Com'r CLEMENTS: Was that an allowance to you by the refrigeration company?.

Mr. WESTFALL: By the refrigeration company.

Mr. HUNSAKER: How have you made your shipments of citrus fruit from southern California during the last four years?

Mr. WESTFALL: Well, during the season of—a part of the season of 1897, I think it was, we have used the same method of ventilating our fruit, in the same Southern Pacific ventilator cars as far as Ogden, and there transferred into the same refrigerator cars, the C. F. T. and icing all fruit that was necessary to ice from there on, and since that time we have used the regular equipment in the field, under the same circumstances as other shippers, practically.

Mr. HUNSAKER: By the regular equipment you mean the
1395 Continental Fruit Express, the Armour line, and the Santa Fe Refrigerator Line?

Also beginning on p. 277 and ending on p. 279 as follows:

Mr. HUNSAKER: During that time you were allowed rebates by the Continental Fruit Express Company from the regular rates, were you not?

Mr. WESTFALL: We have never had any arrangements direct with the C. F. X. car line.

Mr. HUNSAKER: With whom did you have arrangements?

Mr. WESTFALL: We had—at the time we used those cars we had an arrangement with R. Hosbury.

Mr. HUNSAKER: And who was this gentleman?

Mr. WESTFALL: He was connected, as live stock agent, with the Toledo, St. Louis & Kansas City railroad.

Mr. HUNSAKER: And he made the arrangement under which you used the C. F. X. Company's cars for a while, did he?

Mr. WESTFALL: At the time that we used those cars he was acting as our traffic manager. He had charge of all of our railroad matters, car matters and diversion matters connected with our business.

Mr. HUNSAKER: Do you, or not, receive rebates from the car lines?

Mr. WESTFALL: Not direct, and I do not know that the C. F. X. car line ever paid any rebates. All I know is that from time to time while this arrangement existed we received moneys from
1396 Mr. Hosbury from the car lines, as when we made the arrangement with Mr. Hosbury he stated to us that he was in a position to secure better rates from the car lines, and take better care of my business as regards diversions and prompt transportation of same, than we were, and recognizing his ability to do that, we employed him as traffic manager.

Mr. HUNSAKER: And you did receive allowances which you do not know where they came from?

Mr. WESTFALL: We received moneys presumably from the car lines, through Mr. Hosbury.

Mr. HUNSAKER: Now, as to the Armour car line, or the Fruit Growers Express, have you been accustomed to receive allowance or rebates from that line?

Mr. WESTFALL: We have.

Mr. HUNSAKER: State how much per car to the different points, and if there was any difference made where there was refrigeration and where there was not, state what it was.

Mr. WESTFALL: The maximum amount per car that we received was $25, and the minimum $10 per car.

Mr. HUNSAKER: Well, now $10 to what point?

Mr. WESTFALL: Such points as Colorado points.

Mr. HUNSAKER: $25 to what point?

Mr. WESTFALL: To Atlantic Seaboard points.

Mr. HUNSAKER: Did you receive those allowances when there was no refrigeration?

Mr. WESTFALL: We did.

Mr. HUNSAKER: When you shipped under refrigeration did you receive these same allowances and also an additional allow-
1397 ance on the refrigeration charge?

Mr. WESTFALL: Most of the time we received this same amount regardless of refrigeration, but a part of the time we received additional.

Also parts of page 280.

Mr. HUNSAKER: Why, Mr. Westfall, did you seek and receive these rebates from these private car lines?

Mr. WESTFALL: For the purpose, of being, as nearly as possible, upon an equal basis with our competitors. It was necessary in order to compete to accept these additional earnings.

Mr. HUNSAKER: Can you state how much you received from this arrangement with Mr. Hosbury, in the shape of rebates?

Mr. WESTFALL: It would simply be a sort of an estimate; I should say we received several thousand dollars, perhaps.

Mr. HUNSAKER: Do you have any idea about how many car loads you sent out during that period of time?

Mr. WESTFALL: Well, approximately, 800 to 1000 cars, I should think.

Mr. HUNSAKER: And on the average, how much would it amount to on the cars, per car?

Mr. WESTFALL: Not very much over $15. I should think $15 to $17.50.

1398 Com'r CLEMENTS: What period does that cover?

Mr. WESTFALL: It covers a part of 1896 and 1897, I believe.

Also beginning on p. 289 and ending on p. 290 as follows:

Mr. LAMBERTSON: Who is this man Hosbury? Does he represent anybody but himself?

Mr. WESTFALL: He never did in his connection with me.

Mr. LAMBERTSON: Was he connected with the Clover Leaf in any way?

Mr. WESTFALL: I believe he was live stock agent for the Clover Leaf line.

Mr. LAMBERTSON: What salary did you pay Hosbury?

Mr. WESTFALL: I paid him no salary.

Mr. LAMBERTSON: How did he get his pay?

Mr. WESTFALL: I presume that he considered that the privilege of making the route over which our cars should pass would be sufficient for his trouble.

Mr. LAMBERTSON: You did not pay him anything?

Mr. WESTFALL: Nothing.

Mr. LAMBERTSON: Yet he was your general traffic manager without a salary, and you employed him to work the different car lines and railway companies in your interest and get as many rebates as possible?

Mr. WESTFALL: I did not.

Mr. LAMBERTSON: You did not?

Mr. WESTFALL: I did not.

1399 Mr. LAMBERTSON: Did he come to you or you go to him?

Mr. WESTFALL: He came to me.

Mr. LAMBERTSON: Do you know, as a matter of fact, that any money paid to you came from the C. F. X. car line?

Mr. WESTFALL: I do not.

Also beginning on page 292 and ending on p. 294 as follows:

Mr. WESTFALL: That is all.

Com'r CLEMENTS: Which one of these companies was it that allowed $7 per car to do the routing of your shipments?

Mr. WESTFALL: It was the Fruit Growers Express.

Com'r CLEMENTS: Who was the agent that dealt with you in this matter?

Mr. WESTFALL: Robert Graham.

Com'r CLEMENTS: Where does he live?

Mr. WESTFALL: In Los Angeles, at the present time.

Com'r CLEMENTS: Duri-g what period was that?

Mr. WESTFALL: A year ago last summer.

Com'r CLEMENTS: Did the agent of the Clover Leaf line that you referred to, who paid you rebates, represent any of these car lines to your knowledge?

Mr. WESTFALL: No sir; not to my knowledge.

Com'r CLEMENTS: You did not pay him anything?

Mr. WESTFALL: Nothing.

Com'r CLEMENTS: He was not an agent of the car lines, as you know?

1400 Mr. WESTFALL: No sir.

Com'r CLEMENTS: He was the agent of the Clover Leaf line was he?

Mr. WESTFALL: I believe he was at that time.

Com'r CLEMENTS: Well, during what years was it he paid you the rebate?

Mr. WESTFALL: I think it was principally during the year of 1897 and part of 1896; possibly not later, I think.

Com'r CLEMENTS: Not in 1898 or 1899?

Mr. WESTFALL: I think not.

Com'r CLEMENTS: How were those rebates paid? By check or cash?

Mr. WESTFALL: They did not come to us as rebates; just simply a certain amount of money, and they were paid in checks, I believe, or drafts.

Com'r CLEMENTS: Drafts from where?

Mr. WESTFALL: They were paid personally between Mr. Hosbury and myself.

Com'r CLEMENTS: Handed by him to you?

Mr. WESTFALL: Yes.

Com'r CLEMENTS: Whom was the check drawn by?

Mr. WESTFALL: By Mr. Hosbury. No it was not a check, it was a draft, I think; it was on a Toledo bank; a New York draft drawn on a Toledo bank.

Com'r CLEMENTS: Do you know what bank?

Mr. WESTFALL: I do not; I do not remember.

Com'r CLEMENTS: Are you receiving rebates now from anybody, any company, any source?

Mr. WESTFALL: No sir.

Com'r CLEMENTS: No commission, or anything, directly or indirectly, under any name, by which you get back any of the money you pay?

1401 Mr. WESTFALL: Nothing.

Com'r CLEMENTS: Nothing for refrigeration or for freight?

Mr. WESTFALL: No, nothing.

Com'r CLEMENTS: Are you keeping any account by which, from any understanding, you expect to get any rebate?

Mr. WESTFALL: Yes.

Com'r CLEMENTS: Have no understanding or arrangement, or promise that any of it is to be paid?

Mr. WESTFALL: None whatever.

Com'r CLEMENTS: When did it stop?

Mr. WESTFALL: With the end of the deciduous season, last year.

Com'r CLEMENTS: About what time was that?

Mr. WESTFALL: Well, say August, September, October.

Testimony of F. P. Fay—Fruit Shipping Business.

Beginning on page 302 and ending on page 304 as follows:

Mr. HUNSAKER: Now, have these private car lines which you have mentioned been accustomed to make allowances or rebates to you from their regular tariff rates for refrigeration?

Mr. FAY: Yes sir

Mr. HUNSAKER: To what amount, or in what amount?

1402 Mr. FAY: Why it has varied different years, and to different points.

Mr. HUNSAKER: Well, last year, what was the allowance made to you, or rebate on refrigeration charges?

Mr. FAY: $25 per car.

Mr. HUNSAKER: $25 per car all round?

Mr. FAY: On refrigeration charges.

Mr. LAMBERTSON: On refrigeration alone?

Mr. FAY: Yes sir.

Mr. HUNSAKER: What allowance, if any, was made where the fruit was not moved under refrigeration?

Mr. FAY: We had a rate to different points. It varied from $10 to $25 I believe.

Mr. HUNSAKER: $10 to what point?

Mr. FAY: $10 to Missouri River points.

Mr. HUNSAKER: And what allowance was made to eastern points?

Mr. FAY: It varied same. A part of the time we had a flat rate of so much a car to all points.

Mr. HUNSAKER: How much a car?

Mr. FAY: $17.50.

Mr. HUNSAKER: $17.50 a car to all points?

Mr. FAY: Yes sir.

Mr. HUNSAKER: Why did you seek these rebates?

Mr. FAY: We were obliged to do it to have equal rates with our competitors.

Mr. HUNSAKER: Would the business of shipping fruit, in your judgment, based upon your experience, be better if the railroad companies owned their own equipment, and furnished the refrigeration themselves?

1403 Mr. FAY: Yes, I think so. I would rather see a flat rate, no rebates to any one.

Cross-examination:

Mr. HERRIN: That is what you have got now, is it not? Flat rate, no rebates to any one?

Mr. FAY: No sir.

Mr. HERRIN: Have you been getting a rebate lately?

Mr. FAY: No sir.

Mr. HERRIN: Have you not got a flat rate now?

Mr. FAY: There are certain car lines that have privileges that we don't have.

Mr. HERRIN: The rebating is all stopped?

Mr. FAY: As far as I know.

Also beginning on p. 305 and ending on p. 309 as follows:

Mr. HERRIN: Do you know what your competitors got in the way of rebates?

Mr. FAY: I understand that the amount that I was getting was an open rate to most every one, for shipping fruit.

Mr. HERRIN: You never in any case refused to receive more than your competitors were getting?

Mr. FAY: No sir.

Mr. HERRIN: Did you not get as large a rebate as you could, without respect to what anybody else was getting?

1404 Mr. FAY: I did.

Mr. HERRIN: Did you when you got those rebates, did you turn them over to the shipper?

Mr. FAY: No sir.

Mr. HERRIN: What went with those rebates?

Mr. FAY: We kept them.

Mr. HERRIN: Why did you not give the shipper the benefit of them?

Mr. FAY: Because we were handling our own business, shipping our own fruit.

Mr. HERRIN: Fruit that you had grown?

Mr. FAY: Fruit that we had bought.

Mr. HERRIN: Fruit that you had bought; did you not in any case ship fruit for other people, act as the agent?

Mr. FAY: We bought all our fruit f. o. b. California, and it was ours when it left the State.

Mr. HERRIN: Did you not in any case ship fruit belonging to other people?

Mr. FAY: Yes, I think possibly there may have been some small shipments.

Mr. HERRIN: What did you do with the rebates in this case? Turn it over to the shippers?

Mr. FAY: No sir; I did not.

Mr. HERRIN: Kept it yourself?

Mr. FAY: Yes sir.

Mr. HERRIN: Charged the shipper the full rate?

Mr. FAY: Yes sir.

1405 Mr. HERRIN. Why did you not turn it over to the shipper in such a case?

Mr. FAY: They were very small shipments and unimportant.

Mr. HERRIN: Such a little thing, it was unimportant. Then the rebate in that instance, where you shipped for others and took the rebate, you did not take the rebate in that case to put yourself on an equality with your competitors, did you? You took it to get something more than that?

Mr. FAY: I don't know what my competitors were doing, whether they were retaining it in a like instance or not.

Mr. HERRIN: Why did you not decline to receive a rebate in the case where you were shipping for somebody else? Why did you not content yourself with going on and not receiving rebates in these cases?

Mr. FAY: Of course, these small shipments went along with the others.

Mr. HERRIN: Then why did you exact the rebate in this case?

Mr. FAY: No exaction.

Mr. HERRIN: They forced them on you?

Mr. FAY: They offered them to us.

Mr. HERRIN: You took them; and did not turn them over to the shipper.

Mr. FAY: No sir.

Mr. HERRIN: Now, this car that was loaded at Azusa on the Santa Fe track; the fruit used in that load was packed at Covina, was it not?

1406 Mr. FAY: Yes sir.

Mr. HERRIN: Covina is a station on the Southern Pacific road and not reached by the Santa Fe?

Mr. FAY: No sir.

Mr. *Fay:* How far is Azusa from Covina?

Mr. FAY: I don't know the exact distance; 7 or 8 miles.

Mr. HERRIN: And you hauled the fruit by wagon across from Covina on the S. P. track, to Azusa, on the Santa Fe track? And there you loaded it?

Mr. FAY: Yes sir.

Mr. HERRIN: What was the difference, if any, in the rate from Covina as compared with Azusa to any eastern point?

Mr. FAY: No difference in the rate.
Mr. HERRIN: No difference at all?
Mr. FAY: None that I know of.
Mr. HERRIN: What did that cartage cost you, from Covina over to Azusa?
Mr. FAY: I don't know as I remember.
Mr. HERRIN: Cost you something, didn't it?
Mr. FAY: Probably cost $5.
Mr. HERRIN: How did you expect to get even on that $5 that that cost you in getting it over to Azusa?
Mr. FAY: We hauled that fruit over there for the reason that the Southern Pacific at that time was acting very arbitrarily with us.
Mr HERRIN: So you were willing to put up $5 in order to punish the Southern Pacific for acting arbitrarily?
Mr. FAY: No sir.
1407 Mr. HERRIN: What was it then?
Mr. FAY: We preferred to have that particular shipment go over the shortest route, and the Southern Pacific refused to give us the route that we wanted.
Mr. HERRIN: The Santa Fe would allow you the route?
Mr. FAY: We got it to the Santa Fe track. We naturally thought it would go by the direct route to Chicago.
Mr. HERRIN: Where was that shipment going?
Mr. FAY: Chicago.
Mr. HERRIN: Not beyond?
Mr. FAY: It finally went beyond, but at that time the destination was Chicago.
Mr. HERRIN: But you did send it beyond Chicago later?
Mr. FAY: Yes sir.
Mr. HERRIN: Do you not frequently give the destination Chicago, and sometimes divert to points beyond—sometimes three or four diversions?
Mr. FAY: Yes sir.
Mr. HERRIN: Did you think when you took that load over to Azusa that the Santa Fe would permit you to route beyond Chicago? Did you have that expectation?
Mr. FAY: Yes sir.
Mr. HERRIN: You did expect that you would get the privilege of routing?
Mr. FAY: Yes sir.

1408 Also beginning on p. 309 and ending on p. 310 as follows:

Mr. STEVENS: Mr. Fay, in your telegram to Mr. Morton, did you use this language: "Your action, if persisted in, will utterly ruin the fruit business for this season, jeopardizing the entire fruit industry." What action did you refer to; the routing by the railroad companies?
Mr. FAY: Yes, the routing by the railroad companies.
Mr. STEVENS: Well, has your prognostication proved true?

Mr. FAY: No, because they were not nearly so arbitrary in their demands later; they let up a good deal.

Mr. STEVENS: In other words, you have enjoyed practically the same routes since the 1st of January, that you did before, notwithstanding the fact that the railroad company itself has chosen the routes? Is not that true?

Mr. FAY: Yes, that is true.

Also beginning on p. 313 and ending on p. 315 as follows:

Mr. LAMBERTSON: You have not had any private car line during all this time?

Mr. FAY: No sir.

Mr. LAMBERTSON: And is it not a fact that the Fay Fruit Company is doing more business than the Earl Fruit Company, without a private car line?

Mr. FAY: I don't know that to be a fact.

1409 Mr. LAMBERTSON: Isn't that your best judgment about it?

Mr. FAY: I could not say; I do not know how much the Earl Fruit Company is doing.

Mr. LAMBERTSON: And notwithstanding you don't get any rebates this year, you will probably ship about 2000 cars?

Mr. FAY: Yes sir.

Mr. LAMBERTSON: Now, in view of the wonderful growth of the Fay Fruit Company in five years, can you say that the Earl Fruit Company has had any particular advantage over you by reason of the fact that Mr. Earl was interested in the C. F. X. cars?

Mr. FAY: I consider he had advantages over me, and especially this year, when all rebates were cut off?

Mr. LAMBERTSON: When they were cut off?

Mr. FAY: Yes sir.

Mr. LAMBERTSON: Now, is that the real objection? As long as you had those rebates you did not make much objection, did you?

Mr. FAY: As long as we were practically on the same basis as our competitors we had no particular kick; no sir.

Mr. LAMBERTSON: My question is about rebates. As long as you had these rebates you felt things were all right?

Mr. FAY: I would not put it that way; no sir.

Mr. LAMBERTSON: You don't put it that way?

Mr. FAY: No sir.

Mr. LAMBERTSON: You prefer not to?

1410 Mr. FAY: Prefer not to; yes sir.

Mr. LAMBERTSON: The point I want to make here, Mr. Fay, is simply this: that your business had not languished, and that you are not in a very bad way, but that really, without any car line at all, you are doing more business than Mr. Earl—than the Earl Fruit Company—is not that true?

Mr. FAY: We mapped out a very large business last fall, not knowing that there were to be any different arrangements from other years. Naturally we have got to carry out our contracts.

Com'r CLEMENTS: Are your profits on the volume of business you do greater or less now than when you received rebates?

Mr. FAY: Taking the rebates into consideration, they are very much less.

Com'r CLEMENTS: Taking all things into consideration, are you making less out of it, in proportion to the volume of business, than you did before?

Mr. FAY: Yes sir.

Com'r CLEMENTS: How much less on a car-load, for instance?

Mr. FAY: Less the amount of concessions we formerly received.

Mr. LAMBERTSON: Still, the business is a profitable business, is it not?

Mr. FAY: Yes sir.

1411 Also part of page 316 as follows:

Com'r CLEMENTS: Then you have actually shipped this season about 1000 or 1100 cars to date?

Mr. FAY: Yes sir.

Com'r CLEMENTS: You have got no rebates on them?

Mr. FAY: No sir.

Com'r CLEMENTS: You did get rebates on 1200 last season?

Mr. FAY: Yes sir; on all our orange shipments.

Com'r CLEMENTS: Any on lemons?

Mr. FAY: Yes sir.

Com'r CLEMENTS: And that averaged how much to the car?

Mr. FAY: I could not say what the average would be. Probably an average of $17.50; I should guess at it.

Also beginning on p. 317 and ending on p. 318 as follows:

Com'r CLEMENTS: You have got rebates in all cases, whether refrigerated or not?

Mr. FAY: No sir; not in all cases. A good many cars were thrown out.

Com'r CLEMENTS: Well, as a general rule you did, did you?

Mr. FAY: There were a good many cars to non-competing points that were thrown out.

Com'r CLEMENTS: On those you got no rebates?

1412 Mr. FAY: No sir.

Com'r CLEMENTS: Now, in cases where it went under refrigeration, who collected the refrigeration charge, the railroad company or the car line company?

Mr. FAY: Over the Santa Fe road the railroad collected the refrigeration. Shipments over the Southern Pacific were collected by the car lines.

Com'r CLEMENTS: Well, in case it went without refrigeration there was no charge of that sort?

Mr. FAY: No sir; I believe not.

Com'r CLEMENTS: What did you say?

Mr. FAY: No sir.

Com'r CLEMENTS: Was not?
Mr. FAY: No.

——— ———.

Mr. FAY: Yes sir.
Com'r CLEMENTS: And that was paid by the car line company?
Mr. FAY: Yes sir.
Com'r CLEMENTS: Do you know from what source they obtained money to pay rebates on a shipment when they received no compensation at all on that shipment? Where it went without refrigeration they collected nothing and yet they paid $15 or $17?
Mr. FAY: I do not know from what source they obtained it.
Com'r CLEMENTS: Did they ever tell you?
Mr. FAY: No sir.
Com'r CLEMENTS: You say your profits are less this year by the amount of the rebates than they were last year?
1413 Mr. FAY: I would presume so.
Com'r CLEMENTS: I don't want you to answer the question without due consideration, and without understanding, but I want to ask you next whether you pay any more to the people from whom you buy when you get rebates than when you don't get rebates?
Mr. FAY: No sir.

Also beginning on p. 321 and ending on p. 324 as follows:

Mr. HERRIN: Have you not stated recently that you believed the scarcity of cars benefitted the shipper, in that the market kept up, and a great deal better prices were realized for what had been shipped, or words to that effect?
Mr. FAY: Yes sir.
Mr. HERRIN: It is testified to by other witnesses here that the crop this year has ripened sooner or quicker than ordinarily; that is true, is it?
Mr. FAY: Yes.
Mr. HERRIN: Unexpectedly?
Mr. FAY: Yes.
Mr. HERRIN: That is, it is an unusual thing to happen?
Mr. FAY: Yes, unusual thing. The crop, as far as I know, has never ripened so early.
Mr. HERRIN: In your experience there never has been a call for as many cars in the same period as has occurred this season?
1414 Mr. FAY: Never knew such a demand.
Mr. HUNSAKER: Mr. Fay, you said the railroads had not acted as arbitrarily in directing the routing as they did about the first of the year. Now, what has been the practice of the railroad company until about the middle or 20th of January, as to the routing?
Mr. FAY: About the first of January they were very arbitrary about the routing, refusing to give us even the delivering line, in some instance-, that we wanted. It took us several days to get the information as to what routes our cars were going over, but later

they were able to give us that information, and did give us that information as soon as the cars went out.

Mr. HERRIN: And they are doing it now?

Mr. FAY: Doing it now.

Mr. HUNSAKER: Have you insisted on giving the railroad the routing which you requested beyond the line of the initial carrier?

Mr. FAY: In most cases we have made a request for routing; yes sir.

Mr. HUNSAKER: Has that been regarded or not?

Mr. FAY: In many cases, yes.

Mr. HUNSAKER: In others it has not?

Mr. FAY: In other instances they have not respected our request.

Mr. STEVENS: Is it not true that so far as the Santa Fe is concerned, that your suggestions in regard to routing have been followed, without conceding your right to make them?

1415 Mr. FAY: Not in every instance.

Mr. STEVENS: Has not that generally been true?

Mr. FAY: Generally, yes sir.

Mr. STEVENS: Has it not generally been true from the first day of January?

Mr. FAY: Well, I do not think so, no sir; there were a number of shipments we made early in January, in which our routing was not respected.

Mr. STEVENS: Have you not always been able to ascertain from the Santa Fe officials the route over which your shipment moved?

Mr. FAY: Yes sir.

Mr. STEVENS: Just the same as you always knew it?

Mr. FAY: Well, it was on different lines. Formerly we requested our routing and they respected our requests.

Mr. STEVENS: You knew the routing the shipment would take just as if you routed it yourself?

Mr. FAY: Not at all; the car had gone out.

Mr. STEVENS: I mean as soon as the car had gone out—how soon was it afterwards?

Mr. FAY: As soon as we asked for it.

Mr. STEVENS: Whenever that information was asked, it was cheerfully given you, was it not?

Mr. FAY: So far as the Santa Fe was concerned.

Mr. STEVENS: That has always been true, has it not?

Mr. FAY: Yes sir.

1416 Testimony of Charles G. McKinley, Secretary Orange County Fruit Exchange.

Part of page 330 as follows:

Mr. MCKINLEY: The general report is the demand is greater. I know there have been a greater number of cars go forward.

Mr. STEVENS: The fruit has ripened more quickly, and earlier this year, has it not?

Mr. McKINLEY: Yes sir. The general idea is it is about a month ahead of time.

Mr. STEVENS: That would necessitate getting it to the market as soon as possible?

Mr. McKINLEY: Yes sir.

Testimony of T. J. Dreher, Manager San Antonio Fruit Exchange.

Beginning on page 341 and ending on page 342 as follows:

Mr. HERRIN: What other years have you had such a volume of business come on quick for movement as this year?

Mr. DREHER: We have never had such a crop of fruit——

Mr. HERRIN: Never have had such a movement?

Mr. DREHER: No sir.

Mr. HERRIN: It has been distributed along more gradually through the season than this year?

1417 Mr. DREHER: Yes sir; the fruit has not ripened so early.

Testimony of Leland Lyon, Fruit Grower and Shipper.

Beginning on p. 350 and ending on p. 351 as follows:

Mr. LYON: No sir; we have no preference in lines, except to get the shortest and quickest.

Mr. LOVETT: Never have had?

Mr. LYON: Not this year.

Mr. LOVETT: Not since the first of January?

Mr. LYON: No sir.

Mr. LOVETT: You had a preference before that?

Mr. LYON: Yes sir.

Mr. LOVETT: Why?

Mr. LYON: We always choose the shortest route, and quickest route, and then, at times, these car lines would want us to ship by other routes, on which rebates would be given.

Also beginning on p. 363 and ending on p. 364 as follows:

Mr. LOVETT: And that objection applied to the use of private lines generally? You insisted that the railroads should have their own shipment?

1418 Mr. LYON: Yes sir; in general, and specifically and additionally to the Earl car line because we thought they had opportunities—we don't know just how—but several means of finding out the destinations of cars of other shippers, and also they would get special privileges in the way of car line rebates; then the mileage gave them special privileges over other shippers.

Mr. LOVETT: Any better privileges than you had in the way of getting rebates?

Mr. LYON: They made profits on their cars.

Mr. LOVETT: Did it give him any better chance than you had of getting rebates out of his shipments?

Mr. LYON: We believed that he always got more than we did.

Mr. LOVETT: Why?

Mr. LYON: Because we never believed they ever gave us all there was in it, and then he got a certain mileage per car; that was a certain profit per car at the end of the season.

Also beginning on p. 368 and ending on p. 369 as follows:

Mr. LAMBERTSON: And you handle about 250! Then about a fifth of your business is a grower's business, and the other four fifths is a forwarding business?

Mr. LYON: I think about a quarter this year will be our own business, yes sir.

1419 Mr. LAMBERTSON: Now, when you got rebates on this other four fifths did you give them to the growers?

Mr. LYON: Not directly, except in the sense that when we were getting benefits of that kind we were able to pay more to the grower.

Mr. LAMBERTSON: Do you mean to say that you paid more than the market price?

Mr. LYON: We could and did yes sir; repeatedly, very often it was a custom among all packers to do so.

Mr. LAMBERTSON: Do you mean to say that the grower really got any benefit of all that rebate?

Mr. LYON: Very often; at times he did.

Mr. LAMBERTSON: At times, but at times he did not?

Mr. LYON: At times he would not get all of it.

Mr. LAMBERTSON: He would not know, as a matter of fact, that he was getting any rebate?

Mr. LYON: He only knew what he was getting for his first.

Also beginning on p. 373 and ending on p. 374 as follows:

Mr. LAMBERTSON: Did you get any rebates from anybody but the car lines?

Mr. LYON: My understanding was it came all through the car lines.

Mr. LAMBERTSON: Who did you get it from?

Mr. LYON: The people representing the car lines.

Mr. LAMBERTSON: Well, did you get anything from a man by the name of Hosbury?

Mr. LYON: I think we did some several years ago; not for several years.

1420 Mr. LAMBERTSON: Was he a manager of yours?

Mr. LYON: Not in any sense, no sir.

Mr. LAMBERTSON: Was he not a live stock agent of the Clover Leaf Company, running between St. Louis and Toledo?

Mr. LYON: He represented the Clover Leaf; yes sir.

Mr. LAMBERTSON: Is that one of the direct routes for routing oranges?

Mr. LYON: It made as quick time as any; service was good.

Mr. LAMBERTSON: Is it a direct route?

Mr. LYON: I don't think it is direct in the sense of being the shortest. It is direct in the sense of being as quick as any.

Mr. LAMBERTSON: Did any agents of railway companies come out here from the East and offer you anything?

Mr. LYON: Not to any extent, I think. There have been some; yes sir, in some small ways.

Mr. LAMBERTSON: If you would route over particular roads?

Mr. LYON: We have been asked to.

Mr. LAMBERTSON: You have been asked to?

Mr. LYON: Yes sir.

Mr. LAMBERTSON: Will you swear that you never got anything from eastern roads direct?

Mr. LYON: I think we got, sometimes, a small amount from some eastern roads, but never to any extent. It was not our custom. Our business was done almost wholly in that line, through the car lines or their representatives.

1421 Also beginning on p. 378 and ending on p. 379 as follows:

Mr. LAMBERTSON: The reason why you did not have as good cars as the Earl Fruit Company was due to the fact, was it not, that you have not taken the C. F. X. cars?

Mr. LYON: No sir; it was not.

Mr. LAMBERTSON: It was not?

Mr. LYON: No sir.

Mr. LAMBERTSON: Is it not a fact that the greater number of the C. F. X. cars are 40 feet long?

Mr. LYON: I think a greater number this year of C. F. X. cars are 40 feet long, than any other line.

Mr. LAMBERTSON: That is all.

Mr. HERRIN: I suppose the Earl Fruit Company as a rule used C. F. X. cars?

Mr. LYON: As a rule they obtained C. F. X. cars.

Mr. HERRIN: And they are among the best cars, are they not?

Mr. LYON: Yes sir.

Testimony of E. T. Earl, President Continental Fruit Express, President Earl Fruit Company.

(Examined for defendants:)

Beginning on page 415 and ending on page 416 as follows:

Mr. EARL: * * * When I first invented this ventilator
1422 device and applied it to some refrigerator cars, which I think was about 1891, my only object was to provide some cars that would transport the Earl Fruit Company's fruit to destination in good condition. I had no idea of owning cars or entering into

the car business, and I did not know what the profits were in operating cars, or what the cars cost. I looked into the matter, however, and arranged with the Santa Fe people, who were then building some refrigerator cars for the California business, and which cars were the same old pattern cars as those which we had used for years. I arranged with them to permit me to have my ventilator device put onto 100 of their cars at my expense, and with the further understanding that as far as possible the Earl Fruit Company should be allowed to use these cars. These cars were not allotted or leased to the Earl Fruit Company or to me. I had no interest in mileage or railroad comcessions, or anything of that kind; in fact we knew nothing about them. These cars came out to California, if I remember correctly, about January, 1891, and were immediately put into use by the Earl Fruit Company for shipping oranges east. It was soon demonstrated that the car was a complete success, and that it overcame, to a great extent, the difficulties shippers had contended with for many years on account of not having a suitable car for the transportation of oranges at all seasons of the year. All shippers wanted the car. There were only a few of them, and of course everybody could not be furnished with cars of that kind. I concluded in view of the demand for such cars to build
1423 some cars and own them, but when I put this conclusion into effect and endeavored to arrange with the California railroads to run these cars, they demanded that the cars should be furnished for all shippers on equal terms. That meant that instead of building 200 or 300 cars to take care of the Earl Fruit Company shipments, I would have to furnish a thousand or more cars. I then incorporated the Continental Fruit Express which built cars and engaged in the car business on a large scale. It soon had 1500 cars in operation.

Also beginning on p. 419 and ending on p. 420 as follows:

Mr. LAMBERTSON: What percentage of the southern California orange shipments did the Earl Fruit Company handle a few years ago before you became so largely interested in the car line business?

Mr. EARL: I haven't the figures with me at present. I remember in 1896 the Earl Fruit Company handled over 20 % of the oranges shipped out of southern California.

Mr. LAMBERTSON: What per cent. do you handle now?

Mr. EARL: Eight or nine per cent.

Mr. LAMBERTSON: Is the Earl Fruit Company in any way interested in the refrigerator cars?

Mr. EARL: Do you mean the C. F. X. cars, any cars?

Mr. LAMBERTSON: Yes, the C. F. X. cars.

Mr. EARL: No sir.

Mr. LAMBERTSON: Has it ever been interested in these refrigerator cars?

1424 Mr. EARL: Never.

Mr. LAMBERTSON; Does it get any preference in any way or manner or advantage over other shippers?

Mr. EARL: Absolutely none.

Mr. LAMBERTSON: Does it, for instance, in the supply of cars when they are scarce?

Mr. EARL: It has to take its chances with all other shippers. The railroads control the distribution of cars, C. F. X. cars, and other cars.

Mr. LAMBERTSON: Does it load other cars than the C. F. X. cars?

Mr. EARL: Yes sir. Quite often other cars are furnished the Earl Fruit Company, and are loaded, including Santa Fe refrigerator cars, and Armour cars.

Mr. LAMBERTSON: How many small C. F. X. cars are there? And how many of the larger size? Give their dimensions.

Mr. EARL: There are no small C. F. X. cars. There are about 50 of the cars that were built some years ago, and are I believe, 36 foot cars. The remaining cars are, about 1500 of the modern cars, practically 40 feet long.

Also a part of page 458 and part of page 459 as follows:

Mr. HERRIN: I will ask you if in your opinion and judgment, based of course upon your experience and knowledge, if the
1425 number of cars which are furnished to the Southern Pacific Co. and the Santa Fe system under these contracts, are sufficient and adequate for the shipment of oranges, lemons and other citrus fruits from southern California to eastern points?

Mr. EARL: Yes sir, they are.

Mr. HERRIN: You think an adequate supply has been provided for by those contracts?

Mr. EARL: I think so. The temporary scarcity of cars that we have experienced recently has been on account of the present orange crop having ripened prematurely, and having been moved to eastern markets in much larger quantities than any one anticipated. For instance, this crop of this year will probably aggregate 13,000 to 14000 car-loads of oranges and lemons.

Mr. HERRIN: This season?

Mr. EARL: Yes sir; this season, of which already 10,000 car-loads have been shipped.

Also a part of page 459 as follows:

Mr. EARL: * * * Two years ago we had a crop of 15,000 car-loads of oranges and lemons, and the records show that up to this time, two years ago, there had been only about 7,000 cars of that crop shipped.

Mr. HERRIN: That is about half?

Mr. EARL: About half of it had been shipped up to this time, two years ago, whereas over two thirds of this crop has already been shipped.

Mr. HERRIN: Over two-thirds; nearly three-fourths?

Mr. EARL: Yes.

1426 Mr. HERRIN: Is the proportion already shipped this year something unusual in your experience?

Mr. EARL: Yes, no such heavy movement of oranges in proportion to the entire crop has ever moved to eastern markets to my knowledge up to this time of the year.

Also beginning on p. 465 and ending on p. 466 as follows:

Mr. HUNSAKER: Did you make allowances to fruit shippers generally?

Mr. EARL: There were some allowances made to some shippers by the Continental Fruit Express in consideration of their using Continental Fruit Express cars and keeping them in line and not routing them over lines where they would get lost, and cause the Continental Fruit Express loss of mileage and loss of time on the cars.

Mr. HUNSAKER: Did you make allowances or rebates, or did the Continental Fruit Express, on shipments which were made in the cars of the company which were not moved under refrigeration?

Mr. EARL: I think so, yes.

Mr. HUNSAKER: To what extent? To Chicago, what allowance did you make?

Mr. EARL: What year are you talking about?

Mr. HUNSAKER: Last year.

Mr. EARL: Oh! $10 to a point like Chicago; possibly $15.

Mr. HUNSAKER: From $10 to $15 to Chicago?

1427 Mr. EARL: Yes sir.

Mr. HUNSAKER: How much to eastern points, Mr. Earl, to the Atlantic seaboard?

Mr. EARL: Sometimes $20.

Also beginning on p. 488 and ending on p. 489 as follows:

Commissioner CLEMENTS: Now when you have been hauling a refrigeration car and receiving that $115 you have paid how much in rebates—as high as $35 in some cases?

Mr. EARL: Never, not to my knowledge.

Commissioner CLEMENTS: That was some other company, perhaps; such a statement was made. How much did you pay on the New York haul?

Mr. EARL: $20 to $25. Can I state the reason why?

Commissioner CLEMENTS: Yes sir; any explanation you want to make.

Mr. EARL: Any allowance that was made to a shipper using C. F. X. cars was not made out of a surplus profit. It was forced upon us. We were forced to give up these allowances on account of competition of other people, of railroads or car lines; they did it with others and we were compelled to meet it, and let it take our earnings away from us.

Commissioner CLEMENTS: Would car lines or others give it up unless pressure was brought to bear?

Mr. EARL: No sir.

1428 Commissioner CLEMENTS: Neither the railroads or car lines nor any one else goes about giving it up unless there is some pressure to it, in order to get business. So that is always the case, that everybody was forced to do it, in the sense that you say that you were forced to do it, and another does not, it makes it very hard for the one that obeys the law to live at all. That is so in regard to shippers as well as railroads. If one shipper gets rebates and another don't, he is soon overreached and crowded to the wall, and the market is taken away from him.

Mr. EARL: I would not say he was a very wise commercial man if he threw away his rebates or threw away his profits.

Commissioner CLEMENTS: That is, if he had more respect for his financial interests than for the law.

Also beginning on p. 491 and ending on p. 498 as follows:

Commissioner CLEMENTS: Is it a fact that your company has been allowing some of these rebates to shippers where you did not do any refrigeration at all, provided they would allow you to control the routing?

Mr. EARL: There was a demoralizing warfare between these car-lines; there was patent litigation pending between them, and bitter feeling, and they resorted to all manner of means to hurt each other, and we gave up to shippers, in order to keep our cars moving, $15 a car, say. We didn't figure what it came out of. It came

1429 out of our revenue.

Commissioner CLEMENTS: You gave about $15 a car when you were getting about $25 mileage?

Mr. EARL: Yes sir.

Commissioner CLEMENTS: And then you would pick up more mileage east of here?

Mr. EARL: We would simply have to go to some of our friends to help us out.

Commissioner CLEMENTS: What railroads have been paying you rebates in this way within the last year?

Mr. EARL: I cannot designate any routes from my own knowledge, except this Hosbury route, the Clover Leaf route. Two years ago he offered us inducements to route business that way.

Commissioner CLEMENTS: In all this scramble for business, after it leaves these initial roads, resulting in all these various ways of allowing concessions for the business, under one name or another, does it all fall on the Clover Leaf?

Mr. EARL: No sir; I do not think so. I think the Clover Leaf was more flagrant in demoralizing the situation than any other line.

Commissioner CLEMENTS: But can't you name any other line with whom you had such transactions?

Mr. EARL: No, sir; I cannot.

Commissioner CLEMENTS: Because you don't know?

Mr. EARL: Not from my own knowledge. I happen to know something about the Clover Leaf man personally.

1430 Commissioner CLEMENTS: So you have not only the refrigerator charges, but the contract mileage and various other mileages, wherever you could get it, from which to get money to pay the rebates that you have been paying here to shippers?

Mr. EARL: We took it out of our earnings. I would not say one source or another: There were several sources of earnings.

Commissioner CLEMENTS: Any further questions to be asked of this witness?

Mr. HERRIN: Have you paid any of these rebates or allowances since January 1, 1900, Mr. Earl?

Mr. EARL: No, none have been paid or promised.

Mr. HERRIN: Has the Continental Fruit Express paid any such rebates or allowances since January 1, 1900?

Mr. EARL: No.

Mr. HERRIN: Now, I understood you to say that in some cases you have received from these railroad companies an increased mileage. I want to ask you if you ever received from the Southern Pacific Company any excess of the mileage stipulated in the contracts between the Continental Fruit Express and that company, which have been produced here, under notice from the complainants?

Mr. EARL: No, we never received any additional mileage from the Southern Pacific.

Mr. HERRIN: Did you ever receive from the Southern Pacific Company any rebate or rebates or allowance or anything at all in excess of your stipulated mileage?

Mr. EARL: Absolutely nothing.

Mr. HERRIN: That is all.

1431 Mr. LAMBERTSON: Did the Earl Fruit Company ever receive any rebates from any source?

Mr. EARL: No sir.

Mr. LAMBERTSON: Did they ever receive any from the Continental Fruit Express?

Mr. EARL: Never.

Mr. LAMBERTSON: That is all.

Mr. STEVENS: I would like to ask you if you ever received from the Santa Fe lines any other sum than that stipulated in the contract?

Mr. EARL: None.

Commissioner CLEMENTS: Are you receiving any now from the eastern connections?

Mr. EARL: No sir.

Commissioner CLEMENTS: Or have you any understanding that they are to be paid hereafter?

Mr. EARL: I know of none.

Commissioner CLEMENTS: Would you know of it if there were any to be paid?

Mr. EARL: I probably would. The railroads are routing these

cars now, they are going over all kinds of routes. We have no control over the routing. Those eastern roads can't buy the business if they wish to do so. They can't buy it.

Commissioner CLEMENTS: You mean the initial roads control them?

Mr. EARL: Yes sir; the initial lines route the cars. The car lines have nothing to do with it any more.

1432 Commissioner CLEMENTS: Since that condition of things has been brought about you keep all of your mileage and refrigerating charges?

Mr. EARL: We hope to, yes sir.

Commissioner CLEMENTS: Are you doing it?

Mr. EARL: Yes sir.

Commissioner CLEMENTS: These shippers are not getting any of that draw-back?

Mr. EARL: No sir, not from the Continental Fruit Express.

Mr. HERRIN: Have you any reason to believe that any one of these other car lines is now paying any rebates; since January 1, 1900?

Mr. EARL: No sir; I don't think so. I have seen no signs of it. If they had been I think we would have known of it.

Mr. HERRIN: You would have found some symptoms of disease?

Mr. EARL: I think there is nothing of that kind now.

Commissioner CLEMENTS: Has your business been very prosperous—last year?

Mr. EARL: Car line business?

Commissioner CLEMENTS: The car line business.

Mr. EARL: Not very last year. The southern California business was very unsatisfactory, very unprofitable to us.

Commissioner CLEMENTS: Well, now what do you mean by unprofitable? Did you lose money in the business?

1433 Mr. EARL: We did not actually lose money, but we did not realize a reasonable profit on the amount of money invested in the cars.

Commissioner CLEMENTS: How was it with the orange company that you are interested in? You have an interest in the orange business?

Mr. EARL: The Earl Fruit Company, do you mean?—fruit shipping?

Commissioner CLEMENTS: Yes sir.

Mr. EARL: Yes. Not very profitable to the Earl Fruit Company last year. They got no rebates, they had to compete with other shippers who might have had rebates; probably did, and made it very unprofitable for them (the Earl Fruit Company). Their business declined in consequence.

Commissioner CLEMENTS: How did it fail to get a share of the rebates before the business was stopped?

Mr. EARL: Because I had a hand in its policy and would not allow them to take rebates from railroads or car lines.

Commissioner CLEMENTS: Why did you object to it?

Mr. EARL: I did not think it was a proper method of doing business.

Commissioner CLEMENTS: That was not any worse than paying them, was it?

Mr. EARL: Yes, I think it was. The Earl Fruit Company was not paying rebates. The Continental Fruit Express paid them because they were compelled to do so on account of the fights between these car lines and other parties.

1434 The following testimony of ARTHUR GREGORY, W. G. FRASER and A. H. NAETZGER is taken from volume 2 of the record of the hearing in 1900.

Testimony of Arthur Gregory, Fruit Grower and Shipper. Redlands.

Beginning on page 11 and ending on page 14, as follows:

Q. Now, you say that prior to January first you controlled the routing of those shipments?

A. Yes sir.

Q. And that there was competition between the railroad companies to get your business?

A. Yes sir.

Q. How was that competition manifested to you?

A. Well, we had regular solicitors from the railroad companies, different eastern lines, about once a week, and sometimes oftener.

Q. What did they say?

A. Well, they tried to induce us to route over their line. They took the best care of the goods and made the best time.

Q. Well, did they do anything else?

A. And they gave us the arrival of the cars in the different places and destination of every car, and also let us know while the

1435 cars were in transit the dates and arrivals and departures of the cars from the different junction points along the line so that we knew just where that car was; and another thing was, we could always send a message, as these different lines had their agents in Los Angeles, we could call them up at any moment and divert a car to almost any different destination we desired.

Q. Is that all? Is that all they would offer to do?

A. Why, there might be some other things, but I can't just remember all they would offer.

Q. Did they offer you any rebate?

A. The railroad company?

Q. Any of these agents?

A. The car lines?

Q. These solicitors for the eastern lines, soliciting your business, and offering you these things?

A. Some did and some did not.

Q. Did you ever accept what was offered that way?

A. Sometimes I did.

Q. Why did you refuse it?

A. Because it was not enough.

Q. This competition that you speak of which resulted in all these offers, including rebates, is now absent?

A. A number of railroad men never *made me* an offer, anything of the kind.

Q. That is not the question. You have described this competition, what it resulted in. I say that competition is now absent, not in operation?

A. Yes sir.

Q. Now, have you requested from the railroad companies or any of the agents, that they give you the information which you were accustomed to get when you routed these shipments?

1436 A. I have, yes sir.

Q. Who did you make the requests of?

A. Railroad agents.

Q. Which one?

A. Both, Santa Fe and Southern Pacific together.

Q. Did you make it in writing?

A. I think I have, yes sir.

Q. Can you produce it?

A. No sir.

Q. What information did you request?

A. Almost all kinds of information.

Q. What particular things did you request that you did not get? That they did not give you?

A. Well, in a great many instances I have not known which way my cars were going and which lines they were routed over.

Q. Well, what information did you ask about that? What information did you ask about the lines?

A. Well, I have requested the routing, but it was not carried out.

Q. You requested the routing?

A. Yes sir.

Q. And since January first the initial carrier, the Southern Pacific and Santa Fe have made the routing themselves?

A. Yes sir.

Q. That was not information, that was a request. I want to know what information you have requested from them that they did not give you, in line with the information you had before which these competing lines gave you?

1437 A. Well, I have asked them for the routing.

Q. You asked them to allow you to do the routing?

A. No, I asked them what route the car would take; in some cases I was told the route and in some cases not.

Q. Information that you asked and did not get.

A. No sir.
Q. Who did you ask that of, local agents?
A. Yes sir.
Q. He did not give you the information?
A. No sir. I presume he did not know.
Q. Now, is there any other information that you asked and did not get, except what you have stated?
A. Well, there was a great many things, but of course I can't—things that you ask me that I am unable to answer.
Q. Can you specify any particular question that you did not get an answer to, or any request made that you were refused?
A. I can't think of any special cases just now.

Also a part of page 29 as follows:

Q. How were those refrigerator rates collected?
A. By the railroad company.
Q. Collected as a part of the expense bill?
A. Yes sir.
Q. Did you always pay the full refrigerator tariff?
A. Yes sir.
1438 Q. Did you ever get any rebate off of it?
A. Yes sir.
Q. From whom did you get these rebates, from the car lines or the railroad?
A. Car lines.
Q. About what amount?
A. $10 to $25.
Q. Do you get those rebates from the car lines now operating here in this traffic?
A. Yes sir.
Q. All of them?
A. Yes sir.
Q. Get it from all of them?
A. Yes sir.
Q. Has there been any reduction in those tariffs recently that you know of?
A. You mean in the amount per car?
Q. Have you any tariff sheets of the present season?
A. I have not.
Q. Do you know what the refrigerating rates of this season are?
A. I have understood they were the same as last season.
Q. You got a rebate off last year from the tariff, did you?
A. Yes sir.

1439 Also a part of page 30 as follows:

Q. Don't you know that they objected to giving you rebates on cars that you had designated the routing?
A. They sometimes did, not always.
Q. Who paid you the rebate on cars for the icing?

A. The car line.
Q. And they usually routed the shipments?
A. Yes sir.

Also beginning on p. 31 and ending on p. 32 as follows:

Q. How much did your rebates amount to last season, during the season?
A. I can't say just the stated amount.
Q. Oh, about?
A. I think about $3000.
Q. Probably about $3000.
A. Yes sir.
Q. That was for the last season?
A. No, this season, I mean 1898 and 1899.
Q. About $3000?
A. Yes sir.
Q. That was for the last season? About $3000? Then you got some rebates after date of January first, this year, on part of the season that went before that?
A. No sir.
Q. Did not?
1440 A. No sir.
Q. Do you know what your rebates amounted to for the year before 1898 and 1899?
A. I can't state.
Q. I suppose it would run about $3000?
A. No sir, about probably $1000.
Q. But for 1898 and 1899 as much as $3000?
A. I think probably.
By Mr. STUBBS: Have you had offers of any rebates this season, before or since the first of January?
A. No sir.
Mr. STUBBS: Have you had the promise of any rebates before or since the first of January of this season?
A. Yes sir.
Mr. STUBBS: And you have not received any rebates this season, either before or since the first of January?
A. No sir.
Mr. STUBBS: And do not expect to receive any?
A. Don't expect to.

Also a part of page 32 as follows:

Q. In making up your profits at the end of the year the rebates you received would cut a figure?
A. Yes, naturally.
Q. So much for the good of the account?
A. Yes, certainly.
1441 Q. And the profits would be increased by the rebates you received in the business?
A. Yes sir.

Also beginning on p. 32 and ending on p. 33 as follows:

Q. You said that the rates for refrigeration have not been changed for this year over last year?
A. Yes sir.
Q. And the maximum load has been increased to 26,000 pounds?
A. Yes sir.
Q. As over 24,000 last year?
A. Yes sir.
Q. And the same rates apply as for the smaller load?
A. Yes sir.

Also part of page 33 as follows:

Cross-examination by Mr. MADISON:

Q. While you were getting rebates from the car lines, was not your arrangement that the car lines had the right to do the routing, that you could not do the routing in conflict with their directions?
A. They usually gave me routing, but they usually did not seem to care about it.
1442 A. On iced cars, as far as rebates were concerned on iced cars, they did not seem to give any particular routing.
Q. On refrigerator cars, did they?
A. Yes sir. We did not always follow those routes, in some instances, probably half of one third of my business did not go according to the routing of the car line.

Also beginning on p. 33 and ending on p. 34 as follows:

Q. All of your transactions up to this time were had with the car line?
A. Yes sir.
Q. And in regard to the Southern Pacific Company did you say also, they collected the icing charges?
A. I understood so, they did not collect from me.
Q. Did they ever at any time before January, 1900?
A. How is that?
Q. Did they ever at any time, the railroad company, collect the icing charges, before January, 1900?
A. I don't know. They always were paid at the time the freight was put on the car. That is all I know about it.
Q. Were not the drafts made to the consignee, payable to the car line, for the icing?
A. I think so but I have not had a chance to investigate.
1443 Q. That is your understanding, the way the thing was done?
A. The icing charges followed the freight.
Q. Didn't you understand the icing charges were paid by a draft drawn by the Fruit Growers Express on the consignee, and paid on presentation of that draft?

A. I never saw one of that kind, it probably would be drawn on the other party, the consignee.

Q. You understood the charges went to the car line and they paid the *the* icing?

A. I suppose so.

Q. That was the way you understood it that they were doing the icing and being paid for it?

A. Yes, I understood it so.

Also a part of page 37 as follows:

Redirect examination by Mr. HUNSAKER:

Q. In your estimate which you made that you have lost $2000 this season on account of the denial to you of the right to designate the routing of your shipments, what do you take into consideration in estimating that loss? Do you mean the loss of profit and not receiving rebates?

A. No sir, I don't, I mean——

Q. What do you base your estimate on that you have lost $2000 this season?

A. I base my estimate on the fact that I had these certain
1444 cars sold at a certain price, but not being able to divert them to certain parties they went on to a market overstocked—they passed the diversion point and passed onto a market where I received that much less than I would have, provided I could have diverted and sold them differently.

Q. You lost your rebate, too, didn't you?

A. It looks like it.

Also beginning on p. 51 and ending on p. 52 as follows:

Q. Now, did you have any losses in former years similar to these?

A. I have had some.

Q. When the defective ventilation was a frequent cause?

A. That has been my opinion.

Q. And so you have had these cases frequently?

A. Yes sir.

Q. Where it was not properly ventilated, as you say?

A. Yes, I think it has been frequent.

Q. Well, then why do you bring it up in this case as an unsatisfactory occurrence? If it is perishable commodities, you have had losses of this character before?

A. We have never had so much of this character.

Q. You have had more this last year?

A. Yes sir.

1445 Q. But it is the same sort of occurrences that you have had before, except that there are more of them this season?

A. Yes sir.

Q. Don't you think as a general proposition that the fruit of this

season was more apt, or had a greater tendency to decay than othe seasons, on account of ripening more rapidly?

A. I can't say that, because our shipments in February showe more decay than later on.

Q. They ripened more rapidly then?

A. No, not in January, as they did not become very ripe in Janu ary, but my reason for saying that they did not show so much deca in the last two months, I gave instructions to the railroad compan to give them the best ventilation, and took my chances on ther rather than on the railroad company, and gave them better care.

Q. Did you get along bet' ?

A. Yes sir, I had one car frozen that I had to pay $50 on, tha was on a car of lemons I paid $50, besides the loss of the lemons an boxes. But I considered I was ahead in the deal too, as I woul have been if I had allowed the railroad to ventilate my car. Tha is I mean I think it would have been better to have had ventilatio better ventilation.

Also a part of page 54 as follows:

Q. Outside of the citrus fruit business, what other lines of goo do you ship, what products?

1446 A. We ship all kinds of dried fruits, honey, nuts, &c.

Also beginning on p. 54 and ending on p. 56 as follows:

Q. Now, what has been the practice, since the first of January, to the right of the shipper to route shipments, other than citr fruit shipments?

A. Why, I have always placed my routing on the shipping i structions on dried fruits.

Q. The same as you have before?

A. Yes sir.

Q. But since the first of January all competition for the shipme of citrus fruits ceased?

A. Yes sir.

Q. The railroad companies have denied the right of the shipp to direct the routing of the citrus fruits?

A. Yes sir.

Mr. HUNSAKER: That is all.

Mr. HERRIN: You mean competition from eastern lines for citr fruits. You said yesterday that the Southern Pacific and Santa had solicited your citrus fruit shipments since January first, 190

A. Well, no, I can't say that the Santa Fe has. The Southe Pacific officials did ask me when I was shipping a great deal of r fruit over the Santa Fe that they would like a portion of the bus ness.

1447 Q. Did you get rebates on this dried fruit?

A. Did I ever?

Q. Yes.

A. You mean this season?
Q. Yes.
A. No sir.
Q. Former seasons?
A. No sir.
Q. The dried fruits you did not ship in any of these private cars?
A. No sir.
Q. That goes in the ordinary freight cars?
A. Yes sir.

Mr. HERRIN: That is all.

By Mr. HUNSAKER: Has the Santa Fe people solicited any citrus fruit shipments from you this season, Mr. Gregory?
A. No sir.
Q. You say you are making most of your shipments over the Santa Fe?
A. Yes sir.
Q. And that the Southern Pacific asked you for a part of the business?
A. Yes sir.
Q. Do you know whether during this season most of the shippers in your neighborhood have shipped oranges over the Santa Fe?
A. We could not on account of not getting cars over the Santa Fe.
1448 Q. Did most of the shippers order cars from the Santa Fe?
A. Yes sir, they did.

Mr. HERRIN: The Santa Fe was getting your business and did not need to solicit it?
A. I guess not.
Mr. HERRIN: And the Southern Pacific did ask you for more business by your line than you were sending?
A. Yes sir.

Testimony of W. G. Fraser, Riverside, Secretary Arlington Heights Fruit Company.

Beginning on p. 71 and ending on p. 72 as follows:

Q. Take an orange ready to be shipped, how long will—how long can you ship it—you would expect it to arrive in New York in good condition?
A. Yes, in a reasonable time.
Q. In how many days?
A. Twelve days.
Q. How long might this continue before they were used or consumed and be in fairly good condition, proper condition?
A. It ought to stand up three weeks.
1449 Q. Three weeks in addition to that time?
A. Three weeks and be properly sound.

Q. From three to five weeks?
A. Possibly longer.
Q. In addition to the time of the shipment?
A. Yes sir.
Q. That is after the orange reaches New York it would stand up three weeks longer?
A. It might under favorable conditions.

Testimony of A. H. Naftzger, President and Manager Southern California Fruit Exchange.

Part of page 114 as follows:

Q. Does he pay you anything in the way of a stipend or make you a present of any money arising directly or indirectly from the fact that you use your influence, and have used it in past years with the Santa Fe Refrigerator Line cars?
A. He has paid me money on that account.
Q. He has?
A. Yes sir, and I paid it to the Southern California Fruit Exchange.
Q. Have you ever got any money that did not pass beyond your own pocket?
A. None of your business, sir.

1450 Also part of page 115 as follows:

Q. Now, in regard to your receiving any stipend from Mr. McIntosh, or any payment of money, directly or indirectly by way of gift or otherwise through patronizing a car line in which they were interested, you say you refuse to answer?
A. No sir, I don't say so.
Q. You said you got some?
A. That is what I said.
Q. How much?
A. I don't remember that.
Q. When did you get the last, about when?
A. Oh, probably four or five months ago—six months ago, may be.

Also beginning on p. 117 and ending on p. 118 as follows:

Q. When you got this thousand dollars on the Producers Fruit Company stock, the amount you think was as much as a thousand dollars, but the amount you cannot state, who paid that to you, Mr. McIntosh?
A. Yes, whatever that was.
Q. You did not receipt for it at the office of the company, did you?
A. I don't think I did.

Q. When did you transfer that stock in the Producers Fruit Company, about a year ago?

1451 A. I never had any stock in the Producers Fruit Company issued to me.

Q. You understand the stock don't have to be issued to the stockholder to make him such, a business experience of yours. You have had a very large experience, Mr. Naftzger.

A I can't recall it was—I did not hold it very long, but I can't remember exactly when it was.

Q. Did Mr. McIntosh hold it for you, Mr. Naftzger?

A. I am inclined to think he did, although I don't remember in whose name the stock stood. I think I had a mere memorandum from Mr. McIntosh that stated my interest. As I have already said it was involved in that original matter, or arrangement.

Also part of page 120 as follows:

Q. Mr. Naftzger, I will ask you if you have now told us fully and made a complete disclosure of all remuneration or money that has come to you from Mr. McIntosh, directly or indirectly, by reason of any car line transaction whatsoever? Why do you hesitate?

A. No, I have not.

Q. What else was there?

A. I don't intend to tell.

Q. You refuse to answer?

A. You can put it that way, if you like.

1452 The following testimony of E. S. MOULTON is taken from volume 3 of the record of hearing in 1900.

Testimony of E. S. Moulton, Riverside, Packer and Shipper.

Part of page 9 as follows:

Mr. STUBBS: You gave as a probable reason why the Denver man might wish to elect a certain route that he would want his car to go via Pueblo because he could unload a part of the freight there en route. In another case he might want it to go via Union Pacific and Cheyenne, in order to unload part of it at Cheyenne. Do you understand that that was allowable?

A. It was his reason that he gave me. I understand it is not allowable, but I undersand it is done nevertheless.

Mr. STUBBS: You understand that in case it is done it is unlawful, do you not?

A. Yes sir; I understand that.

Beginning on p. 12 and ending on p. 13 as follows:

Q. Referring to the Santa Fe road particularly, how many times have you asked a route that you have not gotten it?

A. I don't recall at present a single time that we have asked for a routing and did not get it.

1453 Part of page 14 as follows:

Q. What were the points that you wanted to ship to with respect to which you had the trouble in getting the routing?
A. Why, nearly all the eastern points.
Q. You had no more trouble with respect to one than another?
A. No.
Q. Now, I wish you would please tell me what particular routing you asked that was not accorded to you.
A. I don't recall any.
Mr. HERRIN: Did you always get the routing that you asked for?
A. Yes sir.
Q. All you complain of was delay in getting it?
A. That is it; the delay, and trouble, and expense.

Beginning on p. 14 and ending on p. 15 as follows:

Q. You say you get an order from an eastern buyer to send a car via a certain route. There has been no case where you have not got that routing?
A. I don't recall any.
Q. Well, then, what harm has there been?
A. The delay and expense.

1454 Also part of page 16 as follows:

Q. This application of the reservation of the right to route has been applied uniformly, so far as you know, to all shippers in California?
A. I have not heard of any discrimination at all in that regard.

Also beginning on p. 19 and ending on p. 20 as follows:

Mr. STUBBS: Referring to those tramp cars, when they were delivered to the railroad company you gave a destination did you not?
A. Yes sir.
Q. A fictitious destination was it not?
A. Yes sir.
Q. When you receive an offer from one of your brokers, to several of whom you have sent manifests of that particular car, you then divert the car from the original destination to the destination at which the broker who gives you the order resides, or orders the car to be sent to?
A. Yes sir.
Q. The railroad companies do that diversion at their own expense, do they not?
A. Yes sir.

1455 Also beginning on p. 24 and ending on p. 25 as follows:

Mr. EARL: Mr. Moulton, in diverting the cars you indicated from point to point; take a car destined to Chicago; you would divert

it in the exercise of this privilege perhaps to three points before Chicago, and you say, for instance, it would go to Des Moines, as you indicated a while ago, and it would stay there a day or two, and failing to be sold it would be sent to Burlington, we will say, and might stay there a day or two, and then getting to destination it would find the market unfavorable. You, after a day or two, would divert it to Detroit, and perhaps sell it there, and if it was not sold there, it would be sent on to some other place where you thought you could market it.

A. Several brokers; yes sir.

Q. Now, the car line, when the shipment is sent forward, makes an agreement with you, if you are the shipper, to ice the car to its final landing place, does it not?

A. When it is under refrigeration.

Q. And the rate, we will say, to Des Moines, Iowa, is off-hand, not speaking correctly, $75. Now, the car line, while the car is delayed at Des Moines, and at those other places that it may be delayed while seeking a market as you have indicated, has to keep the icing of the car up does it not?

A. They would do so.

1456 Q. At their own expense?

A. Yes.

Q. And while delayed there there is no additional charge made to the shipper for the refrigeration?

A. No.

Q. So a car which would take, we will say, eight days, if it went direct to Chicago, might be delayed to ten or twelve, or possible more days than that, by reason of these diversions from point to point prior to reaching Chicago, and, therefore, more ice, if the car was under refrigeration, would have to be supplied by the refrigerator car line.

A. That is right.

Q. Without extra charge?

A. Yes.

Mr. EARL: That is all.

Also part of page 37 as follows:

Q. Well, have you any arrangement, or has your company, the Consolidated Forwarding Co., or any firm or person a member thereof, an arrangement, direct or indirect, whereby they are to get any rebates, say, since the 1st of November, with any connecting carrier in the East, or any railroad company?

A. Yes sir.

Q. They have an arrangement, have they?

A. Yes sir.

1457 Q. Are they able to effectuate that arrangement now, since the first of the year?

A. No sir; you said 1st of November.

Q. I said since the 1st of November, and I ask you if they are able now to effectuate that arrangement since the 1st of January? Are they able to carry out and enjoy the results of that arrangement?

A. No, not since the 1st of January.

Q. That arises from the railroads exercising the routing of the cars?

A. I don't know. I presume that that is it.

Mr. HERRIN: You do know that the routing must be in your hands in order to realize on that rebate arrangement, don't you?

A. Yes.

The following testimony of SETH MARSHALL is taken from volume 5 of the record of the hearing in 1900.

Testimony of Seth Marshall, San Bernardino, President Highland Orange Growers' Association.

A part of page 17 as follows:

Mr. HERRIN: You said awhile ago, as I understood you that those rebates were paid by the railroad companies?

A. I don't say they paid rebates.

1458 Q. Were those rebates paid by the car lines?

A. Different ones; I don't know. Eastern lines had agents here.

Q. Did they get that money from the railroad companies?

A. Not the railroad companies here; eastern lines paid them. I know we had either correspondence with some men here or correspondence with eastern roads that were willing to reduce the rate of freight instead of paying rebates but the initial lines would not do that.

1459 WILLIAM A. BISSELL, a witness produced on behalf of the defendants, The Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. NORTON:

Q. What is your name?

A. William A. Bissell.

Q. And your occupation?

A. Assistant traffic manager of the Atchison, Topeka & Santa Fe system.

Q. With headquarters where?

A. San Francisco.

Q. What were you doing in 1900?

A. Well, I think in 1900 I was appointed to this position. But in 1899 I was in Chicago as assistant freight traffic manager. I ain't certain of the date.

Q. That is near enough. How long have you been in the traffic department of the Santa Fe companies?

A. Since 1884; that is of the allied lines, the Atlantic & Pacific—considering the Atlantic & Pacific or present Santa Fe Pacific as part of the Atchison system, which it has been more or less all the time, I have been with that interest since 1884, November.

Q. By the "Atchison system" do you mean the same as the
1460 Santa Fe system?

A. Yes sir.

Q. And by both of those terms you cover The Atchison Topeka & Santa Fe Railway Company, The Southern California Railway Company and Santa Fe Pacific Railroad Company, defendants here?

A. Yes.

By Mr. CALL:

Q. And the San Joaquin Valley Railroad Company?

A. And the Southern California.

Mr. NORTON: The San Joaquin is not in this?

Mr. CALL: It is part of the Atchison system.

Mr. NORTON: Yes, but it is now owned by the Atchison system, It has been bought.

The WITNESS: It is now owned by the Atchison Company.

Mr. NORTON: Yes sir.

By Mr. CALL:

Q. What is the name of that company?

A. San Francisco & San Joaquin Valley railroad.

By Mr. NORTON:

Q. You say in 1899 you were in the freight department of Chicago?

A. Yes sir.

Q. Have you any information about the taking in hand of the routing of citrus fruits out of southern California by the Santa Fe lines?

A. Yes sir. I had charge of that business. It has always been directly under my charge for a number of years. And I don't know just exactly what you mean by that, but we——

Q. Did you have anything to do with these companies assuming the routing of citrus fruits?

1461 A. Yes sir.

Q. You may state, in a brief and general way, what you had to do with it, starting at the beginning.

A. Well, the business—the transcontinental business was under

my charge, my direct charge there at Chicago, and the payments of rebates had got to such a pass that it was necessary for us to do something to protect all the companies interested. I had interviews with the representatives of some of the eastern lines, commonly known as the trunk lines, to see if something could not be done to straighten the matter out. Those gentlemen all expressed themselves as very much dissatisfied with the existing conditions, but it was the same old story, each one was afraid of the other and afraid if he stopped giving up rebates on the business that they wouldn't get any of it. I asked them if they would be willing or would have any objection to handling this business in such a way as to give them a fair share of the business and obviate the necessity of their being bled. They said they would not only have no objection to it but they would be very much pleased to have such a state of affairs brought about, if it could be.

Q. In what year was this?

A. 1899.

Q. Do you remember the companies whose representatives you talked with?

A. I remember some of them. I talked with Captain Grammer of the Lake Shore; with Mr. Clarke of the same company. He was the general western freight agent. Also with Mitchell, traffic manager of the Michigan Central. With Bigelow, general western freight agent of the Baltimore & Ohio. And with Sam Shane,
1462 who was assistant traffic manager of the Erie. I don't remember whether I talked with any others or not, but I remember talking with those gentlemen.

Q. What proposal did you make to those men as the remedy for the giving of rebates?

A. Why, I suggested to them that if the initial roads exercised their right of control of this freight, that it would do away with the payment of rebates and would relieve them from the tribute that was being exacted by the car lines, for the reason that there would be no inducement then to pay any rebates because they could not tell whether they would get the business after they agreed to pay the rebates; that is, they might agree to pay rebates on certain business and it might move over other lines, being made good to them by some other business on which they had no arrangements.

Q. What do you mean by the "car lines"?

A. Well, I mean the Earl car line, the Armour car line.

Q. Those were owners of private cars?

A. Yes sir.

Q. And operating on the Santa Fe lines?

A. Well, we operated a certain number of the Earl cars and a certain number of the Armour cars. We also operated some of the Santa Fe refrigerator line cars.

Q. By whom were these rebates paid, if you know?

A. They were paid by the car lines.

Q. And to whom?

A. Oh, everybody.

Q. Well, I mean to what class of people, if there was a class?

1463 A. To the people that controlled the business. Sometimes that was the people that owned it and sometimes it was not.

Q. You mean that sometimes the shippers controlled the business and sometimes they didn't?

A. That is what I mean.

Q. Well, do you know who controlled the business when the shippers didn't?

A. Why, frequently the parties to whom it was consigned controlled it.

Q. Do you know whether the car lines ever controlled it?

A. Yes, they did control a good deal of it.

Q. In what way, can you tell?

A. By payment of rebates.

Q. Do you mean by that that the shippers gave up the routing as a consideration of receiving rebates?

A. Yes sir; that is just what I mean.

Q. And do you know that to be the case—to have been the case?

A. I do.

Q. How did this giving of rebates by the car line companies to the various persons you mentioned affect the interests of the Santa Fe companies? Explain that.

A. Why, the car lines were operated over the two routes from California. They were free, at that time, to make arrangements with any lines that connected with the Santa Fe at any junction, and the natural result of that was that as the rebates grew in volume the Santa Fe Company was deprived of the long haul; the busi-

1464 ness would be diverted from our line at Kansas City, for instance, instead of going through to Chicago, or it would be diverted at Pueblo instead of going through to Chicago; and while I don't think that our competitors, the Southern Pacific, were paying any rebates at that time, the result of it was that their connections were paying rebates, and that necessitated the extension of the rebate system west over the Santa Fe lines to a point that was equal with the point of junction of the Southern Pacific with its connections. For instance, if the Union Pacific and the Rio Grandes were paying rebates through the car lines on business routed via Ogden, that brought the maintenance of rate back to the Ogden gateway; and we had to equalize on our lines, say, at Albuquerque. I don't know whether that makes it clear to you or not? Does it?

Mr. DUNNE: You might go a little more into detail, perhaps.

By Mr. NORTON:

Q. Well, I don't understand exactly what you mean "equalize" at Albuquerque. Do you mean that if connecting carriers began giving rebates at Ogden, or——

A. I think I can make that clear, if you will just let me, in my own way.

Q. Yes.
A. Suppose the rebate from Chicago to New York was $15 a c
Q. Given at Ogden?
A. No, from Chicago.
Q. Yes.
A. On a car of oranges moved from Los Angeles to New Yo
there was $15 a car, we will say, paid east of Chicago. As long
that was all the rebate there was paid, it didn't affect t
1465 Santa Fe nor the Southern Pacific. And then, we will su
pose that the line between Chicago and Omaha came into t
field and added $10 more, or $5 more, we will say, and then the li
from Ogden to Omaha added another $5; that would make $25
New York via the Union and Central Pacific, while, via our li
there would only be the $15 unless the connections east of our ju
tions added something to make that good. Of course you und
stand that the rebate—the result of the rebate system is that wh
it was in vogue that we all gave away so much money and got do
to a parity; in the end, we were no better off than we were on t
start. Now, the Santa Fe had—if they wanted to keep the freig
hauled through on their line to Chicago, they had to assume in so
manner the payment of this extra $10 between Albuquerque a
Chicago, bringing it up to $25, which, in the case I have outline
would be the rebate via the Ogden line, and we had to equalize
Q. Otherwise it would leave your rails?
A. Otherwise it would leave our rails.
Q. Where was it leaving your rails largely?
A. Well, otherwise it wouldn't go over our road at all, from L
Angeles, in the case I have stated, unless we did that.
Q. In the first case you have stated?
A. Well, it left—we had a good deal of business that left our ro
at Kansas City; some left at Burton. It may have been the oth
junction—what was that old junction there before we took Burt
on the Frisco?
Q. Newton?
A. Newton.
1466 Q. Well, you mean that——
A. It might leave it at Burton to go over the Frisco
St. Louis.
Q. Well, did any leave at Denver?
A. I think so.
Q. Go by way of Omaha?
A. Well, it wouldn't ordinarily go by way of Omaha then, M
Norton. It would go via Kansas City but go over the Rock Isla
or Burlington from Denver, or the Missouri Pacific from Pueblo.
Q. Now, these shipments that left your rails at Pueblo or at Burt
or Newton or Kansas City—did they leave the rails notwithstandi
that they were destined for Chicago?
A. Frequently. We have a very large amount of freight that l

our rails at that time at Kansas City which was destined to Chicago and went in over the Chicago, Milwaukee & St. Paul.

Q. Did you have shipments that left your rails for destinations that you reached more directly than the routes the shipments took?

A. Yes sir, in many cases.

Q. Now, in addition in having to meet the competition, rebate competition, in order to keep this on your rails and get the haul as far as possible, what other injury, if any, was worked to the Santa Fe companies by these shipments leaving the Santa Fe rails?

1467 A. Why, there was the injury of the fact of our cars being scattered—the equipment that was used for this traffic, which is special equipment, being diverted over roundabout ways and being diverted to lines with which we didn't do much business, making delays in the return of the car for the east-bound traffic, east-bound fruit traffic, and also the lack of ability to get loads with those cars at Kansas City and Burton, necessitating the empty haul of the cars back, when, if the cars had been delivered to us at Chicago, we could have, in quite a number of instances at least, probably in the majority of the cases, have given them loads back here to the orange fields.

Q. What is the rule about returning a car to you that has been taken off loaded?

A. It must come back at the junction at which it is delivered.

Q. So that if an east-bound car leaves the Santa Fe rails at Pueblo instead of Chicago, it is returned to you again at Pueblo?

A. Yes sir.

Q. And you lose the opportunity you might have had of loading it between Chicago and Pueblo?

A. Not only that, but we would frequently, in fact almost invariably, have to haul the car empty from Pueblo back to the orange fields, whereas, if it was delivered to us at Chicago, we could provide it with a load and bring it back here loaded.

Q. Well, I will ask whether the peculiar nature of this equipment is such that you can by keeping the cars on your own

1468 rails return the equipment loaded more frequently than when it leaves the rails?

A. Yes sir, we can load it more frequently if it comes to us at our principal junction, which is Chicago. We cannot always load it there, but we frequently load it there and we sometimes get a partial load for it.

Q. This equipment does not come back loaded so frequently as ordinary freight equipments, anyway, does it?

A. No; it does not; for the reason that we don't haul ordinary equipments out here except to bring the load, while this equipment has got to come back here to get a load to go east.

Q. Now, in the illustration that you gave of the rebates necessary to keep these shipments on your own rails, you stated that it would be necessary to meet the rebates paid at El Paso, or Ogden, for instance. Did you meet those rates in any way?

A. We met them through the car line. In fact, we had to orga
ize a car line, turn our cars over to it, in order to meet the action
the other car lines.

Q. Had the business of citrus fruit shipping been leaving y
before you established this practice of routing?

A. Yes sir. We made several endeavors—we tried the costly e
periment of being honest in this thing, living up to the law as
understood it and declining to pay rebates; and we lost so mu
business that we found we had got to do as the Romans did, and,
there seemed to be an idea that the car lines were exempt from t
interstate law, which provided imprisonment for railro
1469 men caught doing this thing, we had to arrange to do o
business through an outside car line.

Q. Did you have a car line operating on the Santa Fe?

A. Well, we had—we didn't have an outside organization un
this rebate business came up. We then provided an outside orga
ization and leased our cars to it in order to endeavor to hold t
business to us that we thought rightfully belonged to us.

Q. Well, how long did the business go on, then, in this way, af
the giving of rebates through the car line that you mentioned?

A. Well, I can't remember without looking up the data. I shou
say a couple of years, anyway. It may have been longer.

Q. Well, what was the result of the practice as to being sat
factory or otherwise?

A. Well, it was very unsatisfactory. It was unsatisfactory
every one; unsatisfactory to the lines between here and Chicago,
the initial lines that originated the business, and also to the conn
tions.

Q. Did your eastern connections express dissatisfaction about i

A. They expressed dissatisfaction to me every time I talked
them; but they were afraid to take any steps that would debar the
from this business. They felt that they had to, in order to mai
tain their prestige, carry a certain amount of this business.

Q. Well, what do you mean by that?

A. Well, any man that is at the head of the traffic depa
1470 ment of a railroad does not want his competitors to get aw
with all the orange business, or all of any other kind of bu
ness. He wants his share, even if he does not make any money
of it.

Q. So that they would take it notwithstanding that the reba
might reduce the profits to little or nothing?

A. Yes sir.

Q. Is that what you mean?

A. They so expressed themselves to me.

Q. Now, during this two years, you say, that this pulling a
hauling of rebates was going on, you were conferring with yo
eastern connections about this plan to prevent the practice?

A. Well, I talked it over with them more or less, yes sir.

Q. Well, what did you finally determine on doing?

A. Well, we came to the conclusion that we would have to avail ourselves of the right which we believed we possessed of routing this business, and, after having talked the matter over with the other roads interested, we made up our minds to undertake it.

Q. Have you any correspondence with eastern connections on that subject, or copies of correspondence?

A. Well, I have some copies of correspondence with our eastern connections which occurred after we had made up our minds what we were going to do. I have no correspondence that took place with them prior to that time. I talked it over with them, but I never wrote to them about it. It was not one of those things that you wanted to write about very much.

Q. I show you a paper signed "William Sproule" and "W. A. Bissell," and ask you what it is?

1471 A. This is a carbon of a telegram sent on the 19th of December, 1899, to the representatives of the trunk lines and their connections.

Q. Sent by you and Mr. Sproule?

A. Yes sir.

Q. Who is Mr. Sproule?

A. Freight traffic manager of the Southern Pacific Company.

Q. Where is the original of that?

A. The original of that is in the telegraph office, I suppose.

Q. It is not in your possession?

A. No sir.

Q. This is a carbon copy of it?

A. Yes sir.

Mr. NORTON: I would like to read this in and save the copy. May I do that?

Mr. CALL: No objections. The copy taking the place of the original, subject to all objections.

Mr. NORTON: I want to offer that in evidence as "Defendant Santa Fe Bissell's Exhibit Number 1."

The EXAMINER: Very well.

The telegram last offered is as follows:

"12/19/99.

Wm. Sproule, D. H. 7168.
W. A. Bissell, D. H. 8741.

E. F. Cost, C. C. C. & St. L. Ry., Cincinnati, Ohio.
James Webster, Nichel Plate, Chicago, Ills.
Sam P. Shane, Erie R. R.., Cleveland, Ohio.
1472 Geo. B. Reeve, Grand Trunk Ry., Montreal, Que.
G. J. Grammer, L. S. & M. S. Ry., Cleveland, Ohio.
B. B. Mitchell, Michigan Central, Detroit, Mich.
F. L. Dawson, Pennsylvania Co., Chicago, Ills.
B. D. Caldwell, D., L. & W. Ry., New York city.
H. H. Kingston, Lehigh Valley, New York city.

S. B. Knight, Wabash R. R., St. Louis, Mo.
A. P. Bigelow, B. & O. R. R., Chicago, Ills.
A. S. Crane, Fitchburg R. R., Boston, Mass.
H. B. Chapin, Boston & Albany Ry., Boston, Mass.
W. F. Berry, Boston & Maine, Boston, Mass.
S. T. McLaughlin, B. & O. S. W., Cincinnati, Ohio.

On and after January first, nineteen hundred, California termina lines have made arrangements for routing the citrus traffic from California through to final destination. Have further arranged that no diversions shall be made without consent of terminal lines and have notified the car lines interested, who are agreeable to the changed conditions. From this action you will see that if any special arrangements have been made by any lines east of Chicago or St. Louis looking to the control of the business either through car lines, shippers or any other source, that the results expected cannot be obtained thereby, and we would respectfully suggest their cancel-a tion. This result you will see is in line with giving the legal pro tection contemplated to all shippers alike and protecting your inter ests in the traffic at full tariff rates.

WILLIAM SPROULE.
W. A. BISSELL.

1473 Q. Now, did you get any replies to this?
A. Yes sir.

Mr. CALL: I would suggest, outside of the record, that you offe those all together and hand them to Mr. Longley to be copied.

Mr. NORTON: Very well. Here is one signed A. P. Bigelow— Bissell's Exhibit 2; B. D. Caldwell; Bissell's Exhibit 3. E. A Dawson—Bissell's Exhibit 4; James Webster—Bissell's Exhibit 5 G. J. Grammer—Bissell's Exhibit 6; G. S. Reeve—Bissell's Exhibi 7; S. B. Knight—Bissell's Exhibit 8; B. B. Mitchell—Bissell's Ex hibit 9; Sam P. Shane—Bissell's Exhibit 10; a letter from E. F Cost—Bissell's Exhibit 11.

The telegrams last offered were marked, respectively, "Defend ant Santa Fe Bissell's Exhibits Numbers 2 to 11" respectively, and are as follows:

"1020 66 340
Received at San Francisco, Cala.

W. 108 CH. To B. DH. CHICAGO, Dec. 20, 1899.

W. A. Bissell, T. Mgr. A. T. & S. F. R. R., San Fran.:

Your joint message with Sproul just received advising new basi arrangements citrus traffic. I assume our interests will be as wel protected under new plan as one recently adopted with car lines and will be glad coöperate in any direction desired by S–FE and So Pacific. Is it your desire I serve notice on car lines of cancellation arrangements recently perfected with them effective January first.

A. P. BIGELOW. 10–18 a. m.

1474 "1144. 527

Received at San Francisco, Cala.

W. 166 Ch. Dx. AB. 76 D. H. NEW YORK, Dec. 20, 1899.

W. A. Bissell, S. F.:

Information given your telegram regarding manner handling citrus traffic from California to eastern destinations is very gratifying to us as we have consistently declined to participate in excess payments thereon since the matter has been in our control we also congratulate you on the success which is attending your efforts of concerted action as initial lines in matters of this kind and we feel sure that in distribution of the traffic our interests will be protected.

B. D. CALDWELL, 11-45 a. m."

"166

Received at San Francisco, Cala.
W. 49 Ch. Dx. H. 44 DH. 8-57 a. m.

CHICAGO, Dec. 21, 1899.

W. A. Bissell, A. T. & S. F. R. R., San Fran.:

Your message nineteenth about new arrangement governing citrus fruit came during my absence east We are glad to get this information so far as Pennsylvania lines are concerned as you are probably aware we have made no special arrangements whatever of the character indicated.

E. A. DAWDON."

1475 "159.

Received at San Francisco, Cala.
W. 52 Ch. Dx. A. B. 9 D. H.

CHICAGO, Dec. 21, 1899.

W. A. Bissell, S. F.:

We heartily acquiesce in suggestion contained in joint message.

JAS. WEBSTER. 8-55 a. m."

"149

Received at San Francisco, Cala.
W. 45. CH. to. E. B. 12 DH. Ans.

CLEVELAND, O., Dec. 21st, 1899.

W. A. Bissell, A. T. & S. F. Ry., San Fran.:

Your joint message received. Much obliged we will gladly cooperate with you.

G. J. GRAMMER. 8-50 a. m."

" 1157 548
Received at San Francisco, Cala.
W. 174 Ch. Dx. H. 25 DH & D H

MONTREAL, Q., Dec. 20, 1899.

W. A. Bissell, San Fran.:

Message received quite understood and hope you will see we have as good a share as we have enjoyed for last three or four years.

G. B. REEVE. 11–53 a. m."

1476 " Received at San Francisco, Cala. 428
W. 139 Ch to Y 24 DH.

ST. LOUIS, Mo., Dec. 20–99.

W. A. Bissell, A. T. and S. F., S. F.:

Your joint wire nineteenth. We are heartily in sympathy with arrangement outlined and have no arrangement that will interfere with handling the traffic accordingly.

S. B. KNIGHT. 11 a. m."

" Received at San Francisco, Cala. 262.
W. 82 Ch. To. EB. 35 DH.

DETROIT, MICH., Dec. 20th, 1899.

W. A. Bissell, San Fran.:

Joint message received regarding citrus fruit traffic from California. Your notice accepted entire. This company has no arrangements east, leaving the entire question in your hands and hope for a fair percentage of the tonnage.

B. B. MITCHELL. 9–45 a. m."

" 919.
" Received at San Francisco, Cala. 194
W. 65. CH. Dx. AB. 34 D. H.

CLEVELAND, OHIO, Dec. 20, 1899.

W. A. Bissell, A. F. T. M., S. F.:

In answer to your telegram of yesterday, we have no objections to interpose to the arrangement proposed provided we have your assurance that same concurrence is given on the part of all
1477 eastern outlets.

SAM. P. SHANE. 9–17 a. m."

"Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.

E. F. Cost, Freight Traffic Manager.

CINCINNATI, OHIO, December 20th, 1899.

(Office of Assistant Traffic Manager.)

Received Dec. 26, 1899.
Answered ——.

Santa Fe Route.

(San Francisco, Cal.)

Mr. W. A. Bissell, assistant traffic manager, Santa Fe route, San Francisco, Cal.
Mr. William Sproule, freight traffic manager, Southern Pacific Co., San Francisco, Cal.

GENTLEMEN: Your telegram of December 19th in relation to the routing of citrus traffic from California received.

We are indeed glad to get this information as it will protect the revenues of the eastern roads against the undue competition of the several refrigerator lines who have, heretofore, practically sold their business at auction.

I think you are deserving of a vote of thanks from the Central Freight Association roads.

Very truly yours, E. F. COST."

1478 Q. I have here, apparently a carbon copy of a telegram to Sam P. Shane, and signed W. A. Bissell. What is that?

A. This is a carbon of a telegram that I sent to Mr. Shane on the 21st of December, in answer to the telegram that has been submitted here just a moment since.

Q. Where is the original of that?

A. In the telegraph office, if it has not been destroyed.

Mr. NORTON: I offer that as "Defendant Santa Fe Bissell's Exhibit Number 12."

The telegram last offered is as follows:

"Copy. DH 203.

SAN FRANCISCO, December 21st, 1899.

Sam P. Shane, Erie R. R., Cleveland, Ohio:

Your despatch twentieth, answer to joint message: Have no doubt of concurrence of all lines. Have received assurances from most of them already. Plan proposed will be carried out regardless of concurrence.

W. A. BISSELL."

1479 Q. These telegrams and letters received from Bigelow, Knight, Kingston, Caldwell, and others that have been intro-

duced were in answer to this joint message sent by you and Mr. Sproule of December 19, 1899?

A. They were.

Q. And they are all traffic or freight representatives of the lines of railway mentioned in your telegram?

A. Those gentlemen are, yes sir. There are not answers there from all of them. I didn't get answers from all of them. I never had any answer from Mr. Kingston. His road is a small road and their western connection looks out for their business. That is, small as compared with the others.

Q. Who is R. H. Countiss?

A. He is the agent of the transcontinental railroads, the bureau.

Q. At——

A. San Francisco.

Q. What is that bureau?

A. Well, it is a bureau for the publication and dissemination of the tariffs and division sheets.

Q. Interstate?

A. Yes, of the transcontinental roads.

Q. Here is a copy of a letter signed "R. H. Countiss," dated "October 9, 1899," purporting to represent the Southern Pacific Company, Union Pacific, Rio Grande Western railway, Texas Pacific railway and the Santa Fe system, respecting citrus fruit tariffs. I ask you what it is.

A. Well, this is a copy of a circular that was issued by Agent Countiss, representing the transcontinental lines that are par-
1480 ties to the bureau, and as indicating the action which those roads had determined to take in regard to citrus fruit.

Q. Was the circular ever acted under?

A. Yes sir.

Q. Did the lines of the bureau accept it and act under it, do you mean?

A. Well, this was to the other lines, the connecting lines——

Q. The connecting lines?

A. Yes sir. Yes sir. Some—my recollection is that they didn't all accept it at first. My recollection is that there was one or two lines that didn't come in until after the tariff was published. But they were left off; and when they found that they had to comply with that requirement, why, they came in. But I am not positive about that, Mr. Norton. That is my recollection.

Q. Where is the original of that?

A. The original of that was sent to the different roads, connecting lines, by Mr. Countiss.

Q. Do you know this to be a copy of the one that was put out?

A. Yes.

Mr. NORTON: I offer this as "Defendant Santa Fe Bissell's Exhibit Number 13."

The letter last offered is as follows:

"Copy for information of Mr. E. Chambers. Indexed. 8593.

Representing

Southern Pacific Co.
Union Pacific R. R.
Rio Grande Western Ry.
Texas & Pacific Ry.
Santa Fe System.

1481 SAN FRANCISCO, Oct. 9, 1899.

Citrus Fruit Tariff.

DEAR SIR: At a conference held in this city on the 6th and 7th inst., at which the California terminal lines and their direct connections were represented, special consideration was given to citrus fruit tariff, and in order to effectively promote the observance of the interstate commerce act, thereby conserving the lawful interest of all concerned in the traffic, it was—

Resolved, That current citrus fruit tariff be canceled November 14th, 1899, and taking effect November 15th, 1899, Agent Countiss publish for each of the roads represented at this conference, a tariff in connection with specified routes, comprising roads that give express assurance that they will not deviate from the rates provided therein, directly or indirectly, by any method or device, whether in conjunction with carriers, shippers, consignees or car lines.

In full assurance of their good faith, each road, in consideration of being made a party to the new tariff, shall give its assent to the cancellation of said tariff so far as its own road is concerned, in event that rates are not absolutely maintained by it as contemplated in foregoing.

Further, said tariff shall bear the following lawful provision:

'In guaranteeing rates, the absolute and unqualified right of routing beyond its own terminal, is reserved to initial carrier giving guaranty.'

1482 May I ask that you promptly advise me as to whether you will give the assurances which, under the above resolution, are requisite to representation to your company in the proposed new tariff, and oblige,

Yours very truly,

(Signed) R. H. COUNTISS, Agent.

GENERAL NOTE.—Indefinite or evasive responses will be construed as indicating an unwillingness to give the desired assurances."

Q. That circular letter was sent to all of your connections that were published in the joint tariff?

A. Yes sir.

Q. Did any of them refuse to co-operate under it?

A. My recollection is that when the circular was first sent out there was one or two roads that didn't respond, and that in the first issue of the tariff that was made after that that they were left out, but the tariff was reissued later on and they came in.

Q. When was the "later on" tariff issued? What time was that, do you know?

A. I could not tell without looking up the records.

Q. About when?

A. Well it was very shortly after the first one.

Q. The first was in November, 1900, and the next in January, I think?

A. A very short time afterwards.

Q. But all that were published in the second tariff acted under this circular letter?

1483 A. Yes sir.

Q. To your knowledge?

A. Yes sir.

Q. I will ask you to state, Mr. Bissell, whether, at the time that you exercised this control over the routing, there was any other volume of traffic moving in private cars on which rebates were being paid as they were paid on citrus fruits?

A. No, sir, there was not.

Q. What was the object of the Santa Fe companies in preventing this giving of rebates and in putting forth the rule to control the routing?

A. The object was to be relieved of the dangerous practices that were in vogue, to obtain control of their own equipment or the equipment that was assigned to their line over their own road, and to enable them to get fair compensation for the service that they were performing without violating the law either directly or indirectly.

Q. The reason I ask the question is that it is stated in the opinion of the Interstate Commerce Commission that at the original hearing out of which this case grew that just how the rule controlling the routing actually operated to prevent rebate payments by connecting lines, or others, is not disclosed. Now, can you disclose it more clearly than you have done?

A. Well, I don't believe I can, if I have not done it already.

Q. The statement that you previously made shows how it operated?

1484 A. The statement that I previously made covers it, shows how it operated.

Q. Did the enforcement of this rule stop the giving of rebates?

A. Absolutely.

Q. Did it operate to give the Santa Fe companies business which was otherwise going over other routes before that?

A. It did.

Q. You know that?

A. Yes sir.

Q. Did it operate to leave on Santa Fe rails Chicago business that previously left the Santa Fe rails?

A. Yes sir.

Q. You know that?

A. Yes sir; I know that to be a fact. It absolutely prevented the necessity of paying rebates.

Q. Was the——

A. That is very plain I think. If I have explained it as I intended to, the railroad east of us would buy business, and they didn't know whether they were going to get it or not. Now, they wouldn't have to buy but a very little business that way but what they would get tired of it.

Q. Do you mean that now they get a proportion of the business without paying for it at all?

A. Yes sir. It results in everybody's getting the same rate, which, as I understand it, was one of the objects of the interstate law. I think you would not have to go very far in this town to find some of your prominent citizens that shipped oranges in the old days
1485 over these overland roads and the car lines and the representatives of irresponsible eastern roads got the money and the shippers never got a cent.

Q. In the opinion of the Interstate Commerce Commission to which I refer, it is pointed out that this is the only kind of business the routing of which you presumed to dictate beyond your own roads. Is that correct?

A. Well, no, not strictly correct. We exercised the right to route import and export business; and we have also, in at least one case—I could not tell, without looking further, whether we have ever done it more than that or not—yes, I think in two cases we have cut out roads east of us that were violating the law and diverting business by the payments of rebates when we had an understanding that they would not be paid.

Q. You mean that you refused to route business over their lines?

A. Yes sir.

Q. And that was not citrus fruit business?

A. No sir. It was dried fruit.

Q. Do you publish your import and export tariffs?

A. Yes sir.

Q. Were you publishing them in 1900, when you published these interstate tariffs?

A. No sir, we didn't publish them at that date.

Q. The law didn't require it at that time?

A. Well, the commission hadn't laid down the law as they have at present.

Q. Well, you had been publishing these tariffs since the commission required you to do so?

1486 A. Yes sir. I think it is since the Elkins law that we published the tariffs.

Q. And do you put in this import and export tariff a reservation of the right to route as you do in the interstate tariffs on citrus fruits?

A. We do. Would not hesitate to put it into any other tariff, should it become necessary or advisable to do so.

Q. What is this paper?
A. It is the import tariff from United Kingdom ports.
Q. What date?
A. October 1st, 1903.

Mr. NORTON: I want to read from this tariff, without introducing it, for the purpose of saving the record, this language, in italics: "The protection of through rates quoted herein is contingent upon consignee instructing (and consignor complying) consignor to route freight as ordered by United Kingdom representatives of the steamship line or of railroad east of Chicago with which arrangements have been established (see page 4 hereof) allowing rail carriers from such Atlantic ports not less than seventy-five cents per hundred pounds."

Q. You say that these tariffs have been published only since the Elkins law, as you remember?
A. Yes sir.
Q. Well, did you have this regulation which I have read in force as to this class of business in 1900?
A. Yes sir.

1487 Q. In the opinion of the commission to which I have referred, there is some question—I am not able to find it right now—about the good faith of your action in assuming control of the routing. I want to put the question to you directly as to whether your purpose was to prevent the giving of rebates and to maintain the lawful published tariff rates, to prevent cutting, as you have stated.
A. That was our sole object. It had nothing beyond that.
Q. You, in good faith, have no other purpose?
A. We, in good faith, have no other purpose. And I might state, as I think proper, referring to them, the trunk lines, prior to the telegram that was sent them which is stated there in testimony, didn't know, positively, that we were going to do that.
Q. Do you know what rebates were paid on New York business before you put this routing order into effect?
A. Well, they were various. I know of thirty-five dollars a car.
Q. That is, eastern connections would pay that to get——
A. No, that was the through rebate from Los Angeles to New York.
Q. Yes.
A. The eastern lines, I believe, gave up fifteen dollars a car of that.
Q. It is suggested in the opinion of the commission that when the shipper is denied the privilege of routing, his consignments go over insolvent roads and he may be required to settle with irresponsible companies. I will ask you to state what about this in practice.

1488 A. As a matter of fact, the majority, or a great share, of the citrus business that is moved since this routing was taken in

hand by the initial lines has moved over the same roads that it moved over before. The only roads that have been eliminated from the routing by the present practice are the roundabout roads and roads which possibly might come under the definition of the commissioners there, although I didn't know thatt here were any insolvent—or roads of doubtful solvency, in the United States at the present time. But the roads that the business is being routed over to-day are the best roads in the country.

Q. I will ask whether you exercise your influence in requiring connecting carriers to settle just claims with shippers?

A. We certainly do. And one of the benefits that would properly come from the routing of this business by the initial roads would be that we would then have it in our power to divert business or withold business from a road that was disposed to take an unfair advantage of its patrons.

Q. Do you do that?

A. We have done it, and we would do it again if occasion arose.

Q. Now, Mr. Bissell, it is suggested in the opinion of the commission that this routing that you have assumed control of was for the double purpose of making a pool with the eastern connections and of dividing the business out of southern California, citrus fruit business, between Santa Fe lines and the Southern Pacific lines. I will ask whether there is any traffic pool between the initial carriers and their eastern connections.

1489 A. There is absolutely none. That is indicated, I think, in these telegrams. These men were satisfied that it was a good thing to do if they got a fair share of the business.

Q. Has there ever been an understanding with those connecting lines as to whether they would get one per cent. or ninety-nine per cent. or any other per cent.?

A. There has never been any understanding with those roads as to what they would receive, beyond the statement that they would be given fair treatment; and, as a matter of fact, there is not one of them that to-day knows what percentage of the business they get.

Q. Then, you mean to say there is no tonnage pool?

A. There is no tonnage pool.

Q. There was not, at the time you took this action concerning the routing?

A. I can't say that there never was any tonnage pool between the trunk lines. But I can say that there was never any understanding, arrangement, or contrivance by which the routing of this business had anything to do with the tonnage pool east of Chicago or St. Louis.

Q. Well, that is what I mean, that there was not a tonnage pool with your eastern connections based upon this routing.

A. Absolutely, no. It never was thought of.

Q. Now, in the handling of the citrus fruit business out of southern California, did every shipper—did you give to any shipper of

citrus fruit any special privilege or rate or advantage which was not open to any other shipper?

A. When?

1490 Q. At the time this—since this—since 1900?

A. No sir.

Q. Since you took charge of the routing?

A. No sir.

Mr. CALL: You offered that, did you?

Mr. NORTON: Yes.

Mr. CALL: Did Mr. Bissell state whether that was sent out to all the railroads joining in the joint tariff?

Mr. NORTON: In the joint tariff.

Mr. CALL: I am referring to the circular letter of October 19th, 1899, signed by R. H. Countiss.

Mr. NORTON: Yes.

Q. Have you, since 1900, given to any locality, with respect to citrus fruit shipments, any privilege or advantage or preference that was not open to any other locality in the citrus fruit business?

A. No sir.

Q. Have you, since 1900, given any preference or advantage to any business similarly situated with the citrus fruit business?

A. No sir.

Q. Which the citrus fruit business did not have?

A. No sir.

Q. Have you, since 1900, give- a choice of route to one shipper and not to another?

A. No sir.

Q. Of citrus fruits?

A. No sir.

Mr. NORTON: I think that is all just now.

1491 Cross-examination.

By Mr. CALL:

Q. Mr. Bissell, what was the basis of determining the proportion or percentage of citrus fruit traffic awarded to the connecting lines of the Santa Fe road?

A. Well, Mr. Call, when that matter came up my recollection is that Mr. Chambers looked up the record of the business and drew up a routing sheet which showed how it should be properly divided as between our connections, having in mind the necessities of the business. By that I mean that in New York city almost all the orange shippers want Erie delivery; in Pittsburg I believe it is Baltimore & Ohio; and Cleveland, I believe it is Nickel Plate; and in Buffalo, it is Lake Shore. He submitted that—he brought that schedule up to me and we looked it over and concluded we would go ahead on it, and that has been changed from time to time some-

what, but I don't think it is the same to-day that it was when we *arteied* in.

Q. Well, I think that it has been testified that it is substantially the same.

A. Well, I—I mean that I don't think it is exactly the same now as it was when we commenced the business on the 1st of January, 1900.

Q. Well, what was the reason for awarding to the Pennsylvania lines, for instance, a certain percentage east of Chicago? Why did you select the percentage that you did in place of some other percentage?

A. Well, we gave the Pennsylvania the percentage that we did because they never had done as much of that business as
1492 some of the other lines, and on New York business they are not a preferred line. For some other territory, Philadelphia, they are. Now, we didn't base that—our deliveries to Pennsylvania or our other connections, wholly on what they had done; nor did we base it wholly on the business that they gave us; but we would figure that one of the considerations of routing business, for instance, to New York, or to Philadelphia, would be the ability of that road to return those cars to us promptly and return them loaded with some traffic that was to come West.

Q. You did take into consideration, then, the volume of business exchanged between your road and the connecting lines?

A. Yes sir; but the Pennsylvania is an unfortunate illustration for your side of the case, because they give us more business than any other railroad and they get less citrus business from us.

Q. I want to get at the basis, only as to why the certain percentages were fixed upon. Well, did you take into consideration, in fixing those percentages, the volume of general business of the connecting roads?

A. No sir.

Q. The amount of traffic?

A. No sir, we did not. It was considered, somewhat, but that was not the guiding rule. At the time that this thing was put in effect we were very particular to give routes east of Chicago that would afford the shippers as little opportunity as possible to kick, because we knew they were going to kick.

1493 Q. Then, you took into consideration the mileage of the connecting lines, and ability to deliver to a given amount of territory?

A. Yes sir, we took that into consideration.

Q. Well, was not that the chief factor?

A. No sir, I could not say it was. I think the chief factor was the record that those lines had had in the past of being able to transport such traffic to a given market with dispatch and satisfaction.

Q. Was there any other consideration entered into it?

A. Yes, there were other considerations. The fact that, as I say,

that we could get these cars loaded back to us from these lines; and that division, which I believe you have, by the way, Mr. Call, I think shows that it is pretty generally distributed. The main change that I can think of at the moment that resulted from this routing was the fact that more business that required New York delivery by the Erie was given to the Erie at the Niag-ra frontier which before had been given to them at Chicago. Their road extends from New York to Chicago.

Q. How much difference did it make to your company, pecuniarily or otherwise, in the matter of returning empties? How much of an advantage was it to your company under the routing rule?

A. Well, that is a matter that I could not say, Mr. Call, except in a general way. Of course it costs us a good deal to haul empty cars—to haul empty refrigerators out to California, and in the same train, right alongside of them, haul ordinary equipments with
1494 merchandise that might just as well have come in those refrigerators. And that is what we have to do—make up one train of empty refrigerators, and then right behind it an empty train of box cars.

Q. In what percentage of trains, west, is that the case?

A. I think Mr. Chambers can give you that better than I can.

Q. Have you any opinion on the subject?

A. It varies so that I would not like to state. That is, my answer would not be of any value. The records are kept here in Los Angeles, and Mr. Chambers is familiar with that. I have not any objection to answering that question at all, would be glad to, but I don't think my answer would be what you want. I think it is in the testimony already. He is going to follow me. You can get that.

Q. Yes. You referred to the necessity that your company was under, the Santa Fe system, of establishing a refrigerator car line of your own. What car line did you refer to?

A. Well, we leased—it was not—if I said "of our own," I didn't mean of our own. That was, perhaps, an improper answer. We leased our cars to an outsider, and he came out here and ran a car line and did business on lines that the other car lines were doing.

Q. At the present time, how do you handle your citrus fruit? What refrigerator cars do you use?

A. We use our own, exclusively.

Q. Well, are those cars operated by the Santa Fe system, or is it through a subsidiary corporation?

A. They are operated by the Santa Fe Refrigerator Despatch line, under a manager—I don't know just what the relations of
1495 the company with that are, but they are not the same as they were before, Mr. Call.

Q. Who fixes the charges for refrigerating, the Santa Fe Company, railroad company, or the Santa Fe Refrigerator Despatch line?

A. The Santa Fe Refrigerator Despatch fixes the charges for refrigerating. They would naturally be guided very largely by what the Santa Fe road wanted done.

Q. The Santa Fe Refrigerator Despatch is a corporation, is it not?
A. I believe it is. I think it was incorporated.
Q. And does that company own or control the cars, the refrigerator cars, exclusively, which are used over the Santa Fe lines for citrus fruit?
A. They control them. I don't know whether they own them or not. I don't think they do. I think the cars belong to the Santa Fe Company.
Q. Well, what is the arrangement between the Santa Fe Railroad Company system and the Santa Fe Refrigerator Despatch as to the handling of citrus fruit?
A. The Santa Fe Refrigerator Despatch furnishes the cars, and we pay them—we allow the regular amount of mileage. The Santa Fe Despatch takes the earnings from the refrigeration and the mileage, whatever that may be.
Q. Do you know what that mileage is that is paid the Despatch?
A. Well, it is rather complicated. I think that is in evidence here, too. Isn't it, Mr. Norton?

Q. No sir.

1496 A. I think it is in evidence here. However, I don't know that there is any objection.
Q. Well, I would like to have a copy of the contract between the Santa Fe Railroad Company and the Santa Fe Refrigerator Despatch showing present arrangements.
A. Well, I think that is the easiest way to settle it. That, you understand, was not in force at the time of this case.
Q. No. This has taken the place of other arrangements.
A. Yes. I think we can give you that, without question.

Mr. CALL: You will produce that, will you, Mr. Norton?
Mr. NORTON: Yes.

By Mr. CALL:

Q. The rule which is inserted in the citrus fruit tarrif-s, reserving to the initial carriers the absolute right to route, is similar, you say, to a rule which is inserted in other tariffs?
A. No sir, I said that the import business carried a rule similar in effect. The working is entirely different. Here it is (shows).
Q. This regulation went into effect during the present year?
A. No sir.
Q. It says, "Effective October 1, 1903."
A. That is the tariff; but you said the rule.
Q. Well, the rule is contained in this tariff. The rule was in force before this tariff was made?
A. Yes sir: but we didn't publish those import tariffs. Neither import nor export tariffs were published until after the passage of the Elkins act.

1497 Q. Did you usually enforce this rule as to export and import freight?

A. Yes sir.

Q. Did you always enforce it? Was it an invariable practice to enforce it?

A. I should say yes. I think so. To the best of my knowledge.

Q. Well, now, as to other freight, domestic freight, other than citrus fruit freight, can you name any instance when the Santa Fe has enforced the right to route during the last three years?

A. We enforced the right to route business on dried fruit, I should think it was in 1900, against the Ontario & Western.

Q. Railway?

A. Yes sir. We would not take business over their line.

Q. Are they parties to the joint tariff?

A. Yes sir.

Q. And you refused to ship over that road?

A. Yes sir.

Q. For what reason?

A. Because they were paying rebates and starting in to break up our understanding in regard to the maintenance of rates.

Q. They were cutting rates?

A. Yes sir.

Q. Can you name any other instance when you ever enforced the routing rule?

A. I couldn't, from memory, Mr. Call. I don't think we
1498 ever have—I don't think it is a thing that has come up very often.

Q. You have not generally enforced the rule except as to citrus fruit?

A. That is correct.

Q. From what point was it that those dried fruits were being shipped?

A. From northern California and from southern California. I don't know whether there were any shipments offered from southern California or not at that time. We would have declined to route them over that route if they had offered. I think it is safe to say both northern and southern California. Of course you know the bulk of the dried fruit is from northern California.

Q. Do you ship much citrus fruit—I would say carry much citrus fruit from Florida to California?

A. No sir; don't carry any.

Q. No Florida oranges come in here?

A. No sir.

Q. Do you carry much diciduous fruit from northern California?

A. We don't carry very much of that fruit. We carry quite a lot of it, but not compared with what the Southern Pacific carry. They carry a good many thousand carloads, and our carrying is small comparatively.

Q. You don't enforce the routing as to that freight?

A. Because the rate on the green fruit ends at Chicago. The rate

on green fruit is a dollar and a quarter from San Francisco
1499 and Sacramento and all California terminals to Chicago. East of that it pays another rate. On oranges the freight is a dollar and a quarter clear through to New York. We would be very glad to give them the right to route if they would pay us a dollar and a quarter to Chicago and additional tariff beyond. We would make money enough out of that to get even.

Q. Now, the Santa Fe system has lines crossing into a dozen or more States and Territories. Can you name any instance when your company has enforced a routing rule such as the present one as to any freight carried by your road from any other point than California?

A. Well, I don't know that they have, Mr. Call. I don't handle that business.

Q. Well, you don't know of any instance when they have?

A. I know of instances where we have declined to route business over other roads, yes sir. We have declined to route business over the Chicago & Great Western.

Q. Is that a party to the joint tariff?

A. Yes sir.

Q. And for what reason did you refuse to route over that road?

A. For the reason that they were endeavoring to break down our tariffs.

Q. Do you consider that there is, under this routing regulation and arrangements made in pursuance of it, any competition between the connecting lines of the Santa Fe railroad for citrus fruit?

A. In the East? Yes sir, I do.

1500 Q. In what respect do you think they compete?

A. They compete in every respect that they ever did, except in the fact of cutting rates. They have to give good service; they have to give it preferred attention; and they have to satisfy the shippers, the receivers of citrus fruit, as to their terminal facilities. The fact——

Q. Well, there is no competition in the rate?

A. The law does not allow any competition in the rate.

Q. Well, then, I say you say that there is none?

A. Well, I say the law does not allow any.

Q. And in fact there is none?

A. There is none.

Q. Is there any competition in the service, you say?

A. Yes sir.

Q. What object would there be in competing as to service in view of the fact that you give each company a certain percentage of the business anyhow?

A. Well, we don't give each company a certain percentage of the business anyhow. We give them the percentage that we think they are entitled to have; and one of the factors in establishing what they are entitled to have is their ability to do the service in a satisfactory manner, and if we should find one of our eastern con-

nections were neglecting this business and not treating it fairly and not giving the shippers the consideration that they were entitled to, they would very soon find that they had us to settle with.

Q. Well, now, can you name any instance when you decreased the percentage of any road for not showing celerity and ability in the movement of citrus fruit?

A. No sir; which I consider evidence that there is com-
1501 petition.

Q. Well, can you name any instance when you have reduced their percentage for that reason?

A. No sir. Which I consider shows that there is competition.

Mr. CALL: That is all.

Redirect examination.

By Mr. NORTON:

Q. You stated on cross-examination, Mr. Bissell, that in fixing the percentages of distribution there was taken into account the question of reciprocity, what the connecting carrier would turn back in the way of sending the empties loaded. I ask whether that was taken into consideration, ever, to the detriment of the shippers?

A. No sir. It never has been.

Q. How many car lines were operating in the southern California citrus fruit region in 1899 and 1900, or thereabouts?

A. There was the California Fruit Express, and the Fruit Growers Express, and the Santa Fe Fruit & Refrigerator Line.

Q. Three lines?

A. That is my recollection.

Q. Well, what was the Earl line?

A. California Fruit Express.

Q. Well, do you know whether all these car lines were engaged in the giving of rebates, the cutting of the lawful published tariff?

A. Yes sir.

1502 Mr. NORTON: That is all. Do you want to examine him, Mr. Dunne?

Mr. DUNNE: No.

Whereupon the further taking of testimony herein was adjourned to be resumed at 1:30 o'clock, p. m.

DECEMBER 28, 1903—Two o'clock p. m.

EDWARD CHAMBERS, a witness produced on behalf of the defendant-, The Atchison, Topeka & Santa Fe Railway Company, The Southern California Railway Company, and The Santa Fe Pacific Railroad Company, being first duly cautioned and duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. NORTON:

Q. Your name?
A. Edward Chambers.
Q. And your business?
A. General freight agent of the Atchison, Topeka & Santa Fe Railway Company's lines west of——
Q. With headquarters where?
A. Los Angeles.
Q. And how long have you been in that capacity?
A. Since 1896.

1503 Q. You heard the testimony of Mr. Bissell here this morning?
A. Yes sir.
Q. Mr. Bissell stated that you had made the division sheet—is that what you call it?
A. Yes sir.
Q. The division sheet.
A. Routing and division sheet.
Q. The routing division sheet, showing how the citrus fruit traffic originating in southern California should be given to your connecting lines in the East. Is that correct?
A. Yes sir.
Q. I wish you would state when you prepared the routing circular and on what basis you prepared it?
A. I prepared it the latter part of December, 1899. And the basis used in making the percentages for the connecting lines to the different destinations shown in the sheet is largely made upon the proportion, the proportions of business that those same lines received prior to that time, prior to the carriers taking control of the routing. We just take into consideration that there were certain lines leading from Chicago and from the Missouri river to principal destinations or points that took a large amount of citrus fruits that the delivery at the destination controlled the routing, that is the facilities of these lines were closer to the fruit section of the city.
Q. And necessarily took a greater part of the business than lines not so well situated?
A. Yes sir.

1504 Q. In the preparation of the——
A. I would say further, to explain that, that in making up the sheet I gave representation to all the principal routes leading to the different points of destination, so that our agent would be instructed as to the route that he could send the freight to the destination shown in case any shipper wanted any particular line; and the percentages filled in for some lines were merely based on—not on anything; put in, say, five per cent. for some lines that had a connection with us at some eastern point and in connection with some other lines would make some destination, making a through route.

Q. Did you have conference with or did you take the census of your eastern agents with respect to this matter?

A. I did. I consulted my superiors, and, in a general way, we discussed the manner of handling the business after we would take the routing. And I also had the question of delivery at the different destinations, that is, the principal points, up with the Santa Fe traffic representative in that territory, and got from him a confirmation of what had been told me by the shippers, that it was necessary to have certain deliveries. For example, at Boston, all of the business in the city of Boston, the citrus business in the city of Boston, the receivers and of course the shippers prefer the B. & M. delivery in Boston. That is the Boston & Maine delivery. And in New York, the Erie, the Baltimore, and Baltimore & Ohio. and in that way right through the list of the principal cities.

Q. Then, would the fact that most of them at Baltimore preferred the Baltimore & Ohio cause you to give the Baltimore
1505 & Ohio a larger division?

A. That would cause me, say, to make for the Baltimore & Ohio a basis of seventy-five per cent. of the Baltimore business, and allow twenty-five per cent. for the Pennsylvania line, which is the only other through road to Boston from Chicago. That is merely approximately to those lines. We don't work to those percentages at all, and they cut no figure when dividing the business, except on an approximate basis. We rarely ever figure up what each line receives at the end of the season, unless some line should make complaint that we were treating them unfairly or not giving them the proportion of business that their line was entitled to by their deliveries. In that case we would probably figure it up; otherwise we would not.

Q. Then this division sheet which is in evidence, that was sent out by you to your agents, is not followed as to the percentages named, you mean?

A. Not followed absolutely, no sir. It is just an approximate figure for our agents.

Q. Was it intended to be followed closely?

A. No sir, not specially.

Q. What was your intention?

A. Well, as I say, the intention was to furnish the agents with the routes to the different destinations, the direct routes, and in that circular it states how he shall bill the freight or the shipments.

Q. It was intended to be a sort of guide?

A. It is a guide to the agent. And of course he would ap-
1506 proximate, as nearly as possible, the percentages in case there was nothing else controlling.

Q. In preparing these distributions and percentages, did you consult with the connecting carriers to whom you made these divisions?

A. No sir. Oh, I suppose I—I—I would say that I made up myself, from my own general information as to how the business had

moved previously and what I thought the connecting lines were entitled to, ninety-five per cent. of those percentages and routings, myself.

Q. Alone?

A. Yes sir.

Q. How long have you been a freight man?

A. Why, I have been in the freight business with the Santa Fe road for twenty—it will be twenty-five years next February.

Q. Can you—could you, off hand, without consulting anybody or any records, come near to telling what percentage of business goes through different gateways east?

A. I could come pretty close to it.

Q. Do any of the eastern connections to which you made these distributions have any information from you as to what percentages they get?

A. None whatever.

Q. Do they know anything about it?

A. None whatever. Sometimes we receive complaints from a line and we simply answer them giving the number of cars that were delivered to that line and say that that is a fair share of the business moving to the points that they serve.

1507 Q. Then, besides the considerations that you have mentioned for dividing at Baltimore as you have stated, were there any other things moving you to give one company a certain percentage, another company a much larger percentage, and another company a still larger percentage than that?

A. That is all. Just to explain that, I will take Cleveland. Now I think there are three direct lines into Cleveland on the routing sheet from Chicago, the Nickel Plate, the Lake Shore and the Erie. The percentages shown I don't just remember, but I think it is about fifty per cent. for the Nickel Plate, and twenty-five per cent. each for the Lake Shore and the Erie. As a matter of fact, the Nickel Plate has taken ninety-five per cent., for the reason that the shippers always request Nickel Plate delivery at Cleveland. Their depot is down in the business part of the city and close to the fruit section, and it is really desirable, and it would be a hardship on the shipper to route the business for—oh, the great majority of the receivers in Cleveland, over any other line than the Nickel Plate.

Q. Since this routing went into effect in January, 1900, have you been giving deliveries that the shippers asked for?

A. All——

Q. Altogether?

A. All—yes. We give the delivery that the shipper asks for, if it is necessary to his business, and we have that verified in advance. I know myself, at the different points in the East, in fact all over the United States, the lines that have the preferred delivery at the principal market points.

1508 Q. Then, although in theory the Nickel Plate in Cleveland receives a small percentage, in practice it received the bulk of the business?

A. Yes sir. That will hold true of other points.

Q. That was a departure from your percentage estimates, then?

A. Yes. But it was not contrary to what we intended and what we expected.

Q. Did you, in fixing these percentages, making these estimates for distribution, consider the ability of the connecting carrier to handle the traffic promptly and satisfactorily?

A. Yes, we always do that.

Q. Did you consider the ability of the carrier to make prompt returns of empty cars?

A. Yes.

Q. And to return the empty cars with loads, as far as possible?

A. That was a consideration. We are always looking out for that. Whenever we find cars returning to us slowly, we get after the line that has the cars.

Q. Well, do you know anything about the giving of rebates that was in practice before January, 1900, in southern California on citrus fruits?

A. Rebates were generally paid prior to January.

Q. By whom were they paid, and to whom?

A. Generally by the car lines to the shippers.

Q. How many car lines were there?

A. Oh, there was—in December, 1899, I think there were
1509 four private car lines, the Continental Fruit Express, and the Fruit Growers Express, and the Santa Fe Refrigerator Line, and the Overland Fruit Despatch, as I remember it.

Q. To whom did the car lines pay these rebates?

A. They paid them to the shippers.

Q. And do you know where they got the money?

A. Got the money from the railroads.

Q. In what way, if you know?

A. Well, generally the plan was to get an excess mileage, that is, additional mileage, allowance. The standard mileage for private car lines is three-quarters of a cent west of Albuquerque. That is speaking for the Santa Fe. And east of Albuquerque it was one cent a mile. This allowance was made to all private car lines handling perishable freight. Now, the lines east of Ogden and El Paso paid one cent per mile. The car lines would arrange with the railroads for an allowance, say, of a cent and a half a mile, and agree, in consideration, that they would give the railroads a certain amount of business. And out of that excess mileage allowance they would pay the shipper. They would go to the shipper and contract with the shipper for the routing of his business, and route the business over the lines with whom they had arrangements for additional mileage.

Q. Then the railroad company would pay to the car line an excess per mile on the mileage of the cars?

A. Yes sir.

Q. And that money was used by the car line to pay rebates?

A. To control it.

1510 Q. Well, where did the car line get benefit from that?

A. Well, the car line would go to the shipper and make the best deal they could. They would pay him, say, for the routing from California to Chicago, fifteen dollars a car; may be ten dollars a car; may be twelve dollars and a half; and east of Chicago more. The further distance away from California, the greater rebate they could pay. The car line got the difference between what they contracted with the shipper for the routing for and what was allowed them by the railroad as excess mileage. That would be their profit on the transaction.

Q. Then, under that arrangement, the car line did the routing and not the shipper?

A. The car line absolutely did the routing.

Q. Do you know that?

A. Yes sir.

Q. Do you know of any shipper who was prevent- by any car line from routing his goods, citrus fruits?

A. I know a number of them. But one that I remember in particular was the Arlington Heights Fruit Company at Riverside. Well, Prenda is the load station on the Southern California railway. That station is an exclusive station on the Southern California railway. And this was in 1897 or 1898. The entire business, I found, of the Arlington Heights Fruit Company was going to the Southern Pacific at Colton, thence their line to El Paso and Texas and Pacific beyond there and its connections. I went to the manager at that time of the Arlington Heights Fruit Company, and said to him that it didn't look exactly right to have his business

1511 going over the lines of the Southern Pacific when he was located on our lines and expected us to do a good many favors for him in the handling of his various business. He answered me that it was not his fault; that when he made the arrangement for the routing of his business with the Continental Fruit Express they had told him that they would route his business largely over the Santa Fe, but that he started to route his business over the Santa Fe lines and the menager of the Continental Fruit Express objected and insisted that he route it care of the Southern Pacific at Colton via El Paso. He also stated to me that he preferred the Santa Fe line, that he had always heretofore sent his business that way, and was willing then to do anything he could to turn the business to the Santa Fe line. That year I think the Arlington Heights Fruit Company controlled about five hundred carloads of citrus fruit. I then called on the manager of the Continental Fruit Express, to find out what the trouble was, and I soon learned. He said to me that if the Santa Fe railroad would allow the Continental Fruit Express excess mileage amounting to ten dollars per car to Kansas City and twelve dollars and a half per car to Chicago that the business of the Arlington Heights Fruit Company would be sent over the Santa Fe lines; otherwise the Continental Fruit Express could not afford to

let the business go over the Santa Fe lines, as they had contrac to pay the Arlington Heights Fruit Company a certain amount car for the routing. The case of the Arlington Heights Fruit Co pany is a fair example of all the other business.

Q. To your knowledge. To your knowledge?

A. Yes sir.

1512 Q. What did you do about this?

A. Well, we were obliged to meet the situation. We h to satisfy the Continental Fruit Express, and we did so and got t business.

Q. Then, when the shippers were receiving rebates, they were n as you understood it, in control of the routing of their fruits; th surrendered that routing as a price of the rebates?

A. They surrendered the routing to the car lines.

Q. When you published the joint tariffs in the fall of 1899, a again in January, 1900, were the local tariffs published also?

A. You mean the tariffs to Kansas City and Chicago?

Q. Yes.

A. Yes sir.

Q. Those are kept published as well as the joint tariffs?

A. Yes sir.

Q. Have been from that time to this. Is that correct?

A. Yes sir.

Q. Do you recall any other examples of the loss of business to t Santa Fe lines by the giving of rebates through competitors, t cutting of the tariff rates?

A. You mean citrus fruit business?

Q. Yes.

A. By the railroads?

Q. Yes.

A. I don't remember. The rebates were usually worked throug the car lines for the railroads.

Q. Did you attempt, for any length of time, to observe t

1513 joint tariffs, and refuse to make rebates? How long di you maintain that attitude, if at all?

A. That was the policy of the Santa Fe system when this case the Arlington Heights Fruit Company occurred.

Q. You were not paying rebates?

A. We were not.

Q. Not making any concessions at that time?

A. No sir. Started out that way, but we had to finally come i and get our share of the citrus fruit business from the car lines.

Q. Well, how did you come in? As Mr. Bissell stated abou your assigning your cars to some car company? How was tha handled?

A. The cars were assigned——

Q. Leased?

A. —to the Santa Fe Refrigerator Line.

Q. The railway company didn't handle them?

A. That is, they were leased to the Santa Fe Refrigerator Line and the mileage was reported to that company, the mileage on the cars. Just so as to have the operation the same as with the other private car lines.

By Mr. DUNNE:

Q. You mean excess mileage, don't you?
A. All the mileage; excess and all.

By Mr. NORTON:

Q. Is the Santa Fe operating its own refrigerator cars now?
A. Yes sir. In fact——
Q. It handles its business in its own cars?
A. Yes sir.
Q. Well, I am speaking——
1514 A. I will just explain. The Atchison, Topeka & Santa Fe Railway Company own all the cars, that is, they own all the stock in the Santa Fe Refrigerator Despatch; and the cars are distributed under the directions of the officers of the Santa Fe railway.
Q. At the time that you assumed control of the routing in 1900, was there any secret cutting of rates or giving of rebates as to any other commodity than citrus fruits in southern California?
A. I don't remember any.
Q. Was there any large or considerable volume of business moving in private or refrigerator cars at that time outside of the citrus fruit business?
A. None other. The citrus fruit business was the only business moving in private cars on the Santa Fe lines at that time out of California.
1515 Q. Now, what was your purpose—first, did you have anything to do with Mr. Bissell in the matter of assuming control of this routing? Did you co-operate with him?
A. Yes, we consulted together.
Q. Well, what was your purpose in assuming control of the routing?
A. It was to prevent the payment of rebates. I recommended it to Mr. Bissell myself.
Q. By the payment of rebates you mean the—in effect the cutting of the published tariff rates?
A. Yes sir.
Q. Did you have any other purpose? Was this the sole purpose?
A. That was the sole purpose. My judgment was that that was the only way in which it could be stopped. We had tried various ways before that.
Q. Did it stop the cutting of the tariff rates?
A. It stopped it absolutely; took the control of the business not only out of the—of the routing, not only out of the hands of the

shippers but out of the hands of the car lines. The car lines were really the ones that controlled the routing of the business.

Q. Well, you don't consider that the shippers ever routed the business?

A. Not to my knowledge. That is the great bulk of the business.

Q. Did you, as a traffic man, when you wanted more business, wanted business that you thought should come to the Santa Fe lines, consult with the car line companies to get it?

1516 A. Always, before that.

Q. And did you find that they were the people who handled it and controlled it?

A. I did.

Q. The car line companies, then, routed the citrus fruit traffic, before 1900?

A. Yes sir.

Q. In the report of the commission which heard this case before it got into the present court, the question is raised as to whether this routing which you assumed and the distribution of the traffic according to the circular you issued were done in good faith, and it is left open as to what your purpose was. The hint is made that it was to create and maintain a pool with eastern connections. And I ask you whether, in the preparation of this routing circular, or in the control of the routing in any way, you entered into a pool with your eastern connections as to the citrus fruit traffic?

A. There is absolutely no pool. Our connections knew nothing at all about the percentages.

Q. Did not know at that time?

A. No sir.

Q. Do they know now?

A. They do not.

Q. Have they ever known anything about it?

A. They never have known.

Q. Have they ever had anything to do with those divisions?

A. No sir.

Q. Been absolutely in your hands altogether?

A. I have handled all the details, and through me is routed

1517 all of the citrus fruits that move out of California on the Santa Fe lines.

Q. The query is also raised by the commission as to whether there was a tonnage pool between the initial carriers. What do you say as to that? And that this was one of the means of maintaining it, this practice of routing?

A. The routing had nothing to do with that at all. It was made in absolute good faith, to prevent the payment of rebates and put all of the shippers on an equality, the large and the small. There had been a great deal of complaint to myself and other officials of the Santa Fe system about certain large shippers getting greater rebates than the smaller ones, and I have no doubt but what it was a fact. That was one of the great arguments made to Mr. Ripley

the president of the Santa Fe road, as to why the Santa Fe Company should own its own refrigerator cars.

Q. Was there a tonnage pool between the initial carriers?

A. There was none.

Q. Did you deny the privilege of routing to any shipper, if he would pay the published local rates?

A. No sir.

By Mr. CALL:

Q. Do you mean to say, Mr. Chambers, that you never did deny to a shipper directions as to routing where he paid the joint through rate?

A. He says the local rates.

By Mr. NORTON:

Q. Local rates.

A. I would say, thought, we never denied a shipper the delivery he wanted to destination; not to my knowledge. We would always give them the delivery they asked for, the destination of the
1518 shipper.

By Mr. CALL:

Q. But you are referring to the intermediate lines.

A. Intermediate lines we don't allow them to specify.

By Mr. NORTON:

Q. But in the routing that you gave them, did you give them the most direct routing?

A. Always, yes, sir. That is one of the factors that goes to make up the circular of instructions to agents. Not only the most direct route, but the routes that the shipments can be diverted from the destination—from one destination to another. For example, into Buffalo. We could not send a shipment of citrus fruit into Buffalo over a line that it could not be diverted out from Buffalo to New York, because the market is likely to be off at Buffalo, or overcrowded, and the shipper will want to divert to another market. So, that would be a very serious objection to sending it over a line that could not divert it out of Buffalo, and we would not send over any line leading to Buffalo that could not divert beyond and protect the through rate just the same as if the shipment had started from California and gone through to final destination without any diversion.

Q. Do you know whether, as a matter of practice, the routes that citrus fruit has traveled since 1900 have been more direct or less direct than the routes it traveled before?

A. They are more direct. No doubt about it.

Q. Did the car lines send shipments by round-about ways, to your knowledge?

A. Well, the car lines would send the shipments over the lines where there was the most profit in it for them.

Q. What controlled their routing, the routes they took, if
1519 you know?

A. Their mileage arrangements, largely.

Q. That is to say, the money there was in it as rebates?

A. The money they got from it, the mileage.

Q. What controls the route the fruit takes now?

A. The general service, the time and the ability to divert beyond, and the prompt return of the cars.

Q. Is the fruit, in all instances, given the most direct and practical routing?

A. Yes sir. I can say that that circular that is made up in my office shows the most direct routing to all of the destinations shown in connection with the Santa Fe line.

Q. It has been suggested in the report of the commission that under the present order the shipper is compelled to send over insolvent lines, and that he does not have good settlements made for delays and losses. What do you know about that?

A. I don't know of any insolvent lines that we send business over.

Q. Do you use your power in routing to compel the companies to settle just claims?

A. We do. I can say that we don't have much trouble in getting a connection to settle a claim that has merit, any claim that we would pay ourselves. I have never found any trouble in getting our connections to take the same view of it we do.

Q. As general freight agent, you are over the movement of all classes of freight as well as citrus fruit?

A. Yes sir.

Q. Can you tell from your acquaintance with the subject
1520 and the business whether since 1900 the movement of citrus fruit has been relatively as rapid as it was before, that is to say, as compared with the movement of other traffic?

A. It is more rapid than the other traffic. When the business was light prior to 1890, all traffic, citrus fruit business included, the Santa Fe lines probably gave a little better service on all of its business than it did later when the traffic got very heavy. But I can say our citrus fruits——

By Mr. DONNE:

Q. You said "1890." Did you mean that?

A. 1900. But citrus fruit freight has preferred attention on the Santa Fe lines, and is given a better movement than any other class of business.

By Mr. NORTON:

Q. That is, since 1900?

A. Yes sir.

Q. And did it have this same preferred attention before 1900?

A. It was always the policy, yes sir.

Q. I wish you would state, now, fully, what has been the general effect of your exercising your right to route citrus fruit, in all particulars. What has been the effect of that; that is, in a practical way, as you have seen it?

A. Well, as I see it, speaking from my knowledge, we get better service out of our refrigerator cars. They are returned to the junction points East, with more regularity, and to the junctions that we—where we want them. The icing facilities are better, for the reason now that we know the lines over which the business is going to move, and proper arrangements can be made with those lines, speaking of our connections, for providing ice. That is one
1521 of the very important things to be done with shipments under ice. You have got to select the junction point, really, so as to get within a reasonable distance of an ice house or ice factory where the cars can be replenished. That is something that must have been done by the manager of the car line. And the icing facilities really, with shipments under ice, control. We would not attempt to send business over lines that don't have good icing facilities on our rails.

Q. You keep informed as to the facilities?

A. Keep informed, and the manager of the Santa Fe Refrigerator Despatch—that is one of his duties.

Q. Is icing cheaper than it was before, do you know?

A. Considerably cheaper.

Q. How much? Can you tell?

A. About $15.00 a car, I think.

Q. Between southern California and where?

A. Between southern California points and Chicago and New York.

Q. That is, since this routing went into effect?

A. Yes sir.

Q. Since 1900. Has the payment of rebates ever been resumed by any car line since 1900, the enforcement of——

A. It never has. It is impossible to do such a thing now.

Q. Then the routing by you has been effectual in suppressing the cutting of the published rates?

A. We have no doubt but what every shipper pays the same rate.

Q. Every shipper pays the same rate?

1522 A. Yes sir.

Q. Since 1900, have you given to any shipper of citrus fruit any preference or advantage over any other shipper?

A. No sir.

Q. Have you given any preference or advantage to any locality—any town or locality, as against any other town or locality?

A. No sir.

Q. Were these preferences or advantages given to persons and to towns and localities before you exercised this right to route, if you know?

A. Yes, to a certain extent they were. I don't know that it—because we always control the right to place the cars for whatever shipper we cho-se.

Q. Well, but in the matter of rebates, did they all get the same rebate?

A. Oh, no.

Q. Well, what I mean is, before 1900, did any shipper get his shipments delivered at the point of destination cheaper than some other shipper?

A. I would say they did.

Q. Have any preferences of that kind been shown since 1900?

A. No sir.

Mr. NORTON: Do you want to ask him anything?

Mr. DUNNE: Yes, I would like to ask him one question.

By Mr. DUNNE:

Q. Mr. Chambers, before you instituted this new system of routing by the initial carrier, at least a system to the extent that you
1523 asserted the right to do it, a practice of rebating had very generally prevailed in the movement of citrus fruits from southern California, paying rebates? That is correct, is it not?

A. Yes sir.

Q. Now, is it not a fact, Mr. Chambers, that in the development of that practice it finally sttled down to this, that most of that rebating was done through these private car lines? Is that correct?

A. That is correct, yes sir.

Q. And the private car lines exacted the right to route from the shipper as the price of the rebate? Is that correct?

A. Yes sir, that is correct.

Q. Now, I want from you what commodities were carried by the private car lines in these cars?

A. I don't know what—you mean commodities?

Q. Did they carry citrus fruit? Was that the product or commodity that they carried principally in their private cars?

A. Citrus fruit was the principal commodity; in fact, almost altogether.

Q. That was the principal commodity?

A. Some vegetables.

Q. Yes sir. But principally, substantially speaking, the transportation purpose of these private cars was to carry citrus fruit, was it not?

A. Citrus fruits, yes sir.

Q. And it was in relation to the transit of citrus fruit over the rails on these private cars that the private car lines practiced the system of paying rebates? Is that correct?

A. Yes sir.

1524 Q. Now, outside—with the exception to a very small extent of vegetables, outside of citrus fruits, were any oth

commodities which were distributed out of California by the initial carriers transported in these private cars, or were they not carried over the general freight cars of the company?

A. There was no other commodity to any great extent.

Q. Yes sir.

A. Sometimes we—sometimes we would load out of California other freight in the refrigerator cars, but it was at a time that we didn't have citrus fruit to load in the cars, and we never found any trouble in the matter of rebates with other freight loaded in those cars.

Q. Now, does that not afford an explanation, and if it does not, I want you to correct me—does not that afford an explanation of the circumstance that it was in reference to this particular output of citrus fruit from southern California that the initial carriers insisted upon enforcing the right to route?

A. Yes sir.

Q. And you didn't find the same necessity or emergency in the case of other commodities, did you?

A. No sir.

Mr. DUNNE: That is all.

By Mr. NORTON:

Q. One further question, Mr. Chambers——

A. I would say, in explanation of that, that these cars were contracted for by the railroads to operate in this business alone, specially.

1525 Mr. DUNNE: Yes.

A. They were not to handle any other business, and were not taken to handle any other business.

Mr. DUNNE: Exactly.

By Mr. NORTON:

Q. One further question: In the circular which you issued to agents, the distribution circular, there is one paragraph that instructs the agents—that is in evidence—that they keep it private, keep it locked up. What was your intention in inserting that caution in the distribution circular?

A. That was put in there so as to keep that information from our connections. We didn't care to be bothered with explanations as to why we were sending a certain percentage for one line, and the other line another percentage; and, as most of them had representatives out on the coast that were continually travelling around on our lines, it was just a caution to our agents that they could not give that information out without my consent. But you understand that was distributed to every agent on our line, on the Southern California railway.

Q. But you didn't want other lines to get it?

A. A way-bill for citrus fruit. No sir.

Q. There is one further question I overlooked before. Some of

the witnesses who testified before the commission and since the case got into this court said that you had refused to receive shipments of oranges that had been delivered to you. I think there were two examples given, and I believe the shipments were brought from the Southern Pacific, some station on the line of the Southern Pacific.

Do you know anything about that?

1526 A. I remember about one carload that was hauled from Covina by the Fay Fruit Company. Covina is a station exclusively on the Southern Pacific line, and this shipment was hauled out of a packing house located on the Southern Pacific road at Covina to Azusa, which is a station on the Santa Fe line opposite, about four miles distance between. That shipment was loaded—we didn't refuse to receive it. It was loaded in a refrigerator car on the Southern California railway, and routed east care of the Southern Pacific line at Colton.

Q. Well, did you route it over the Southern Pacific?

A. That was done shortly after the carriers, or the initials, took charge of the routing. There was an effort made to break down the rule, and we looked upon that hauling the shipment over there as being an act on the part of the Fay Fruit Company to make some trouble or contention or stir up something that would break down the rule of the initial carriers doing the routing.

Q. The shipment was taken out of a warehouse where it was ready for transit on the Southern Pacific line?

A. Yes sir, and it was unusual. Nothing of that kind had been done before. And it was an unnatural movement.

Q. And hauled by team over four miles to Santa Fe railroad?

A. Yes sir.

Q. And you didn't think it was done in good faith?

A. I was certain it was not done in good faith.

Q. You thought there was some nigger in the woodpile?

A. Yes sir.

Q. I will ask you whether at any time the Santa Fe Com-

1527 pany, to your knowledge, refused to furnish refrigerator cars to shippers, when it had them on hand?

A. No sir.

Q. Were instructions ever sent out by you to agents to refuse shipments when you had the cars?

A. No sir.

Mr. NORTON: That is all.

Cross-examination.

By Mr. CALL:

Q. Is it not a fact, Mr. Chambers, that in numerous instances since this controversy arose, in 1900, that shippers have been furnished with Armour cars and C. F. X. cars on your lines and have requested routings over the Santa Fe road but that such requests have been ignored and routings made over the Southern Pacific lines?

A. Well, I can explain that, Mr. Call.

Q. Well, I ask if that was not a fact?

A. No sir. But we did this. I will say this. In part, it is true; but the shipper was not denied the routing. The shipper would order—in some cases, where the shipper would order cars to go over the Santa Fe lines, and he would be told that we could not supply him with such cars but could give him cars that would go over the Southern Pacific. The shipper usually chose, himself. He would say, "Set the cars that I can load over the Southern Pacific lines, if your cars cannot be furnished." That happens very frequently.

Q. Those were cases where the Santa Fe was short of its own cars and supplied the shipper with Southern Pacific cars?

1528 A. Yes sir.

Q. And routed the freight, then, over Southern Pacific?

A. Yes, the freight goes over the Southern Pacific in a case of that kind. The rule is that the car, the refrigerator car, goes back to the line that brought it west. We would not have any right to load east over our line cars that had come west over the Southern Pacific line.

Q. I understood you to say, in substance, that for a period prior to January, 1900, when the paying of rebates was generally in vogue, that the car lines during that period controlled the routing?

A. Yes sir.

Q. Well, did they secure control of the routing through the paying of rebates to the shipper or producer?

A. Through the payment of rebates to the shipper, or the party that controlled the routing.

Q. Well, did the car lines control the routing in any other manner than by the payment of rebates?

A. No sir.

Q. During the past year, the Santa Fe system has controlled its own refrigerator car system, has it not?

A. Yes sir.

Q. Known as the Santa Fe Refrigerator Dispatch?

A. Santa Fe Refrigerator Dispatch.

Q. Well, in view of the fact, then, that the Santa Fe Railway system controlls its own refrigerator car system, could not the railway company have controlled the routing through its car line without enforcing the routing rule, if that was done before?

1529 A. You mean by paying rebates?

Q. Or in any other way?

A. Yes, the Santa Fe railroad could control the routing through its car line, if there was—by requiring the cars to be moved over certain lines; say to a shipper, "This car cannot move over the Erie road to New York. You have got to ship it over the Baltimore & Ohio. If you ship over the Erie you will have to transfer at the junction point."

Q. It could enforce the routing rule through the car lines.

A. So long as that was the only thing they had to contend with; but if—you have to look out for competition with other car lines, if the business went back into the hands of the car lines again. There would still be the inducement for the car lines to try and deal with the railroads, which they are out of entirely now. The Santa Fe car line has nothing to do with the routing of citrus fruit. It is done by the Santa Fe railway.

Q. How does the Santa Fe Railway Company control the Santa Fe Refrigerator Dispatch line?

A. They control its stock, and the manager of the Santa Fe Refrigerator Dispatch reports to an officer of the Santa Fe railway, who is the vice-president of the Santa Fe Refrigerator Dispatch also.

Q. Who gets the earnings of the Santa Fe Refrigerator Dispatch car line?

A. The earnings go to the Santa Fe Refrigerator Dispatch; that is, they are reported, the mileage earnings are reported to the Santa Fe Refrigerator Dispatch, and afterwards turned over to the railway company.

1530 Q. As dividends?

A. As dividends, I presume, yes. On its own lines—Mr. Bissell, in testifying, said that the mileage was allowed the Santa Fe Refrigerator Dispatch by the Santa Fe Railroad Company, but he was mistaken in that. There is no mileage reported by the Santa Fe Railroad Company to the Santa Fe Refrigerator Dispatch.

Q. And no mileage is paid?

A. No mileage is paid to them by the railway company, because it is simply a matter of bookkeeping—the way the cars are handled. They belong entirely to the Santa Fe Railway Company.

Q. Well, does the Santa Fe Railway Company report those earnings to the Interstate Commerce Commission as a part of its earnings, that is, those earned by the Santa Fe Refrigerator Dispatch car line?

A. I can't say as to that, Mr. Call, how they are put in. I suppose they are included in miscellaneous earnings.

Q. What is the object and purpose of having a separate corporation to control the car line business through the instrumentality of an independent corporation?

A. I don't know that I can say as to that. Part of the cars that are in the Santa Fe Refrigerator Dispatch now were owned by the Santa Fe Railway Company previous to the organization of the Santa Fe Refrigerator Dispatch, and part of the cars were owned by the Santa Fe Refrigerator Company, which was a corporation, I believe. I think in acquiring the equipment of the Santa Fe Refrigerator Company, in some way it was thought best to have a separate corporation in order to take over the cars of another corpora-

1531 tion. And then it has always been the policy to have a special department to handle the refrigerator line. We have always had it. And there was still another reason, too. I had forgotten it. And that was to put the cars on foreign lines on equality

with other private car lines. That is, there is a question about mileage or per diem allowance to private cars that does not apply to the ordinary car, and it was considered that if the cars were operated as the railway company's equipment, regular ordinary equipment, they would come under a certain rule which would be a little different and put them at a disadvantage with the cars of other private car lines.

Q. What is the total mileage of the Santa Fe Railway Company, including the Southern California Railway Company, in the citrus territory of southern California?

A. Well, in the citrus territory, it is about—let's see. It is about 418 miles, I think taking off the line north of San Bernardino. Mr. Hibbard, you would know.

Mr. HIBBARD: That is practically correct.

By Mr. CALL:

Q. That does not include the line in the desert from Mojave to Needles?

A. It does not include the line north of San Bernardino, up the hill.

Q. Nor north of San Bernardino. It does include the line to San Diego?

A. Yes sir.

Q. And all the other lines south of the Sierra Madre mountains?

A. Yes sir.

Q. State, if you can, what is the mileage of the Southern
1532 Pacific Company south of the Sierra Madre mountains in the citrus fruit territory?

A. Well, I did know, but I have forgotten. But it is very close to that. My recollection is there is very little difference between their mileage and ours in the citrus territory.

Q. They have no line to San Diego?

A. Including the Santa Barbara line. I include that in the citrus territory.

Q. Do you include the line to Yuma in that?

A. No sir, not east of Colton. I think their line is drawn at Colton junction somewhere.

Q. You think it would be nearly the same as the Santa Fe?

A. I think it is very close, yes sir. I have seen the figures, but I don't remember them just now.

Q. How long was the payment of rebates in vogue prior to 1900 on citrus fruits?

A. As far back as I can remember it. Back to 1887.

Q. Ever since the Santa Fe road has been in southern California?

A. I guess before, too. My time dates from that. I don't know about before.

1533 Q. Can you instance any case where the Santa Fe Railway Company has enforced a regulation or rule reserving the right to route as against any other freight than citrus freight?

A. Mr. Bissell mentioned the import and export business. We have always routed that east of our lines. We frequently exercised the right to route shipments for various reasons. I remember not long ago where we routed a lot of wool from Arizona. The 'Frisco line came out to the local point on our line, a representative of the 'Frisco line. We had reason to believe that he offered a rebate to a certain shipper for the sending of some large amount of wool over the 'Frisco line from Burton, which is a junction point on the Santa Fe line west of Kansas City. The shipment was destined to Boston. The natural route for that business, coming from a strictly local point on the Santa Fe line, was by way of Chicago. The Santa Fe got the long haul. And that is the way we sent it, regardless of the direction of the shipper. The Santa Fe at Chicago and some line east of that.

Q. Can you instance any other case?

A. Well, a short time ago we published a rate on asphaltum to New York from California, sixty cents per hundred pounds in carloads. Some of the lines east of Chicago declined to prorate that rate on the established basis of per cent., and we were obliged to route all of the business over one line which did come in and did prorate the actual rate, although the rate was published in the eastbound tariff; so there was arrangements for divisions with only one line, and over that line we sent all of the business. We told the shippers in advance when the shipments were offered that they had to move that line. Some shippers wanted certain other de-
1534 liveries in New York, but we didn't give it to them.

Q. Except in the isolated cases you have mentioned, has the Santa Fe Company enforced the routing rule as to any other freight than citrus fruit?

A. Not generally, no sir. Not generally on any other commodity. Well, there is another commodity; on lumber. On lumber shipments from points in Arizona. We always control the routing. It is necessary.

Q. You did that to secure the long haul, did you not?

A. No. We had to do that to get the lowest rate. We had to arrange for the proportions east of Chicago or Kansas City, as the case might be.

Mr. CALL: That is all.

Redirect examination.

By Mr. NORTON:

Q. One question further, Mr. Chambers: In your testimony about giving the Southern Pacific cars to shippers on your line, I should like to ask whether the shippers could have had refrigerator cars on your line at all times if they had waited until you had them to deliver?

A. They could, if they waited, yes sir.

Q. In taking, then, the Southern Pacific cars, and loading them on your line, it was a matter of choice with the shipper whether he would ship immediately or wait?

A. Yes sir.

Q. I will ask you to state whether, from your general knowledge of the freight business, the routing by you has in any way operated to delay the transit of citrus fruits?

1535 A. It has not.

Q. Has it operated, do you know, to expedite it?

A. I would say it had; yes sir; very materially.

Q. Mr. Call asked you on cross-examination why the car lines now—the Santa Fe car line now can not control the routing as well as car lines controlled the routing before 1900. Can you explain that more fully?

A. Before 1900, the car lines got control of the shipments by paying the shipper for that control. Now, they are not in a position to do that, because the railroads control the routing instead of the shipper.

Q. And it is not saleable?

A. Not saleable, no sir.

Q. Now, the question was also put to you as to routing other kinds of commodities than citrus fruit. I will ask you to state whether, since 1900, or before, for that matter, but especially since 1900, there has been any other commodity in the same class as citrus fruit respecting the giving of rebates?

A. There has been none.

Q. Has there been any other commodity the rates concerning which have been cut either directly or indirectly as they have or had been respecting citrus fruits before 1900?

A. No sir.

Q. Then, I understand generally that the reason does not exist for you to control the routing of other commodities as you have controlled the routing of citrus fruits?

A. It does not. I might explain that.

Q. Very well.

1536 A. That with the other commodities the car lines have no connection, the private car lines have no connection, so that the shipper, in order to get a rebate, must deal directly with the railroad, which it is a dangerous thing for a railroad company to pay any rebates under the present interstate commerce law: and it was easy for any carrier to get at another carrier who was paying rebates, doing him an injury by complaining to the Interstate Commerce Commission. With the private car lines it was easy for them to manipulate and avoid the law through the mileage arrangements they had with the railroads. And then it was generally understood that the private car line was not subject to the interstate commerce act. That is what caused the thing to spread and for them to deal so openly in the rebates.

By Mr. CALL:

Q. As a matter of fact, they were not private car lines, thoug were they?

A. All private car lines, yes sir.

Q. Well, they hauled for the public, did they not?

A. Well, private ownership, I mean. What I mean by priva car lines is——

Q. They were carriers engaged in interstate commerce?

A. Well, that was the question.

By Mr. DUNNE:

Q. That is a question of law.

A. They didn't seem to think——

By Mr. CALL:

Q. Well, is it a question of law? They were carriers, were th not?

A. Not common carriers.

Q. They carried freight, did they not?

Mr. NORTON: Not all kinds. They were special carrier
1537 not common carriers.

The WITNESS: But the car line people themselves unde stood that they were free from any punishment or any obligation the interstate commerce act, or they would not have been so open their dealing. On the other commodities, it was a railroad prop sition entirely.

Mr. NORTON: I think that is all. Do you want to ask him, M Dunne?

Mr. DUNNE: No; nothing more.

I. L. HIBBERD, a witness produced on behalf of the defendan The Atchison, Topeka & Santa Fe Railway Company, The Southe California Railway Company, and The Santa Fe Pacific Railroa Company, having been duly cautioned and solemnly sworn to te tify the truth, the whole truth, and nothing but the truth, testifi as follows:

Direct examination.

By Mr. NORTON:

Q. What is your name?

A. I. L. Hibberd.

Q. What is your business?

A. Superintendent of the Southern California railway.

Q. What were you doing in 1900 and for some time previo thereto and some time subsequent thereto?

A. From October, 1897, until October, 1903, I was superintende of the Albuquerque division of the Santa Fe Pacific, and afterwar A. T. & S. F. railways.

1538 Q. Where is the Albuquerque division?

A. It is that portion of what is known as the coast lines between Albuquerque and Seligman.

Q. Albuquerque, New Mexico, to Seligman, Arizona?

A. Yes sir.

Q. How long is it?

A. Four hundred and twenty nine miles.

Q. And during the time you mentioned, you were superintendent of that division?

A. Yes sir.

Q. As superintendent, you were responsible for the movements of equipment and of freight?

A. Yes sir.

Q. That is what your service is, to move business? Is that correct?

A. Yes sir, and maintain the property as well.

Q. Now, Mr. Hibberd, have you examined the records of the Santa Fe, or can you tell from memory what the tonnage or volume of traffic was on your division say for one or two years previous to 1900, 1900, and since 1900?

A. Well, I could only tell in a general way as to the volume of the business without referring to records, and I obtained from the records of the car accountant the car miles moved over several years from 1898 to 1902, I believe, inclusive, over the Santa Fe Pacific.

Q. Well, state the car mileage on that division in 1898.

A. Well, the figures which I have do not separate the two divisions, the Albuquerque and the Arizona. His figures give the total of the two divisions.

1539 Q. Where is the Arizona division?

A. That is that portion of the line between Barstow and Mojave and Seligman, adjoining the Albuquerque division on the west end.

Q. Then it is the division next west from your own division?

A. Yes sir.

Q. Well, you have figures for both of those divisions?

A. Yes sir.

Q. Well, what was the car mileage on—those divisions are largely in Arizona?

A. Yes sir.

Q. On the Santa Fe Pacific railroad?

A. Yes sir.

Q. Now, what was the car mileage in 1898, on those divisions.

A. The total car miles east and west bound on this—this is made up on what we call revenue car miles; does not include cars moved in ballast trains.

Q. Paying business?

A. Yes sir.

By Mr. CALL:

Q. Does it include empties?

A. Yes sir, includes empties moved for revenue freight. Were 54,328,365, in the year 1898.

By Mr. NORTON:

Q. What was the car mileage in the next year, 1899?

By Mr. CALL:

Q. Please explain what you mean by "car mileage."

By Mr. NORTON:

1540 Q. I was going to ask him that, but I wanted the figures to go in all together.

A. Well, that would be brought to this basis of so many cars moved one mile.

By Mr. CALL:

Q. Yes.

A. The year 1899 was 52,846,634.

By Mr. NORTON:

Q. In 1900?

A. 57,592,896.

Q. What was it in 1901?

A. 71,632,450.

Q. What was it for 1902?

A. 61,065,128.

Q. And 1903, have you that?

A. No, I have not that, as the year is not complete.

Q. This does not include anything in the way of maintenance business, such as hauling fuel or water?

A. It wouldn't include anything hauled in what we would call a construction train, such as an exclusive water train, or an exclusive ballast train. It would include all cars hauled in what we term revenue trains.

Q. Now, I will ask whether, during the winter of 1900 and 1901, you were not affected by miners' strike on your division?

A. We were very seriously affected during the winter of 1900 and 1901, by a strike of all of the miners with the exception of one or two insignificant operators at Gallop.

Q. Where was this strike? At Gallop, New Mexico?

A. At Gallop, New Mexico.

Q. Did it affect your carrying power?

A. It did, very greatly.

1541 Q. What kind of coal is produced there?

A. The coal produced at Gallop is what is known as the first class quality of lignite coal.

Q. Does it require any special form of equipment as to grates, ash-pans, burners or screens, and so forth?

A. It does. From ordinary bituminous coal, it requires a different grade and different netting.

Q. How long did this strike last? The whole winter?

A. I can't give you the exact dates, but it is my recollection that it occurred—I think in the month of December, and extended around, I think, into March or April, I am not certain as to dates. But it covered several months.

By Mr. CALL:

Q. 1901?

A. 1900 to 1091?

Q. That would be from January to March—all in one year?

A. Yes, that part of it would be. I think, though—I am not positive of dates, but I think it occurred just before the end of the year.

By Mr. NORTON:

Q. 1900?

A. 1900.

Q. And ran through the citrus shipping season of 1900, and 1901?

A. Well, what—yes, through the first shipments of 1900 and the heavy shipments of 1901.

Q. I will ask you to state whether any other coal, for instance, coal brought from eastern mines, could have been used in your equipment on that division, your locomotives, without over-
I542 hauling them and putting in different apparatus, burning apparatus?

A. It would be necessary to change the grates and change the netting of the stacks.

Q. Well, in the condition of traffic at that time, was it practical either to get coal from the East or to make the changes in your locomotives, if you could have got coal?

A. Well, we did make changes of the engines and we got coal from the East, from long distances East. I won't say how far. But it was hauled, much of it, from Kansas, some I think from Missouri to Arizona.

Q. You made all the effort possible?

A. Every effort possible was put forth.

Q. To transport the citrus business?

A. To transport the citrus business.

Q. At the time of this strike, according to the figures you have given, the car mileage had increased over the previous year something like five millions?

A. It was a very heavy year, 1901 was.

Q. Well, during 1900—first, has your locomotive equipment been increased from 1900, until the present time?

A. It has been.

Q. How much, relatively? A great deal?

A. Well, to state numerically would not give you any idea of the

increased efficiency which has been obtained, because the new engi
will haul, in some cases, just twice the tonnage of those that are
placed.

Q. Well, about how much has your tonnage capacity—put it th
way—been increased? One-third, or one-half?

1543 A. Well, I should think the efficiency had been increas
oh, more than a third.

Q. Since 1900?

A. Oh yes.

Q. Been increasing it constantly?

A. Yes sir.

Q. Has business been increasing all this time?

A. It has.

Q. Now, during 1900, 1901, and 1902, was special and preferr
attention given to citrus fruits?

A. It was.

Q. If there were any delays in citrus fruits since 1900, over th
average made in 1899, or 1898, was there relatively the same del
as to other classes of business?

A. I should say yes?

Q. By that I mean—I want to know whether you have at
times made this a preferred class of freight?

A. The instructions are that citrus fruits, and at times when th
are short of empties in California that the empty refrigerators, sha
be moved next in preference to livestock. I might change that
little. I classed the empties with the loads. The instructions a
always that the perishable freight shall be moved next to livestoc
and in case of shortage of refrigerators in California the empti
shall be treated west-bound the same as the loaded cars are ea
bound, moving them next to preference to livestock.

Q. And in case of shortage of refrigerator cars in the Los Angel
country you give the empties west-bound preference?

A. Yes sir.

Q. Next to livestock?

1544 A. Yes sir; they take preference over the movement
anything else except livestock, or what little perishable freig
there may be moving west-bound.

Mr. NORTON: That is all. Do you want to ask anything?

Mr. DUNNE: No questions.

Mr. CALL: That is all.

EDWARD CHAMBERS, recalled on behalf of the defendants, The Atchison, Topeka & Santa Fe Railway Company, The Southern California Railway Company, and the Santa Fe Pacific Railroad Company, testified as follows:

Direct examination.

By Mr. NORTON:

Q. Mr. Chambers, I want to ask you one more question: The testimony of a good many witnesses is to the effect that upon the going into use of this routing practice there was immediately a decline in the efficiency of the service. There were delays of citrus fruit shipments. What do you know about that? Most of the witnesses putting the cause of the delay at this routing practice of yours.

A. I could not say as to the service right after the routing went into effect, whether it was any different from that previous. But the routing, I know, didn't have any effect on our service in any way at all.

Q. If there was any delay after 1900,——

A. It was from other causes.

Q. What would there be—what conditions existed which would serve as causes?

1545 A. Well, the large volume of business. I think the year that the initial carriers took the routing was the largest shipment that up to that time had been made of citrus shipments eastbound.

Q. Yes. And was it still larger than the following year?

A. I think it was. I don't remember.

Mr. NORTON: That is all.

Mr. CALL: That is all.

Mr. NORTON: That is all we have. Oh well, one further question, Mr. Chambers, on the subject of diversions. I had forgotten about that.

Q. Mr. Chambers, it is in evidence here from a number of witnesses that after the routing was taken in charge by you that it was impossible to have fruit diverted as well as it had been diverted when they were controlling the routing as they claimed they were. I will ask you to state what the facts were as to that?

A. The rule was continued just the same as it had been previously. I think, if anything, the service is improved.

Q. You think that diversions are still being made as promptly as they were made before?

A. I think they are made to-day more promptly than ever before, on account of the increased wires, telegraph wires, and the general organization of the service.

Q. Who makes the diversions now for shipment?

A. Do you mean who——

Q. What company?

A. With whom the diversions are filed?

1546 Q. Yes.

A. For the Santa Fe Company they are filed with any o our agents in California.

Q. Well, then, does your company make the diversion no matte where the car may be?

A. Yes sir. Always has.

Q. Did before 1900?

A. Yes sir.

Q. And does now?

A. Always had—the connecting carrier has always had to have the consent of the Santa Fe road before they could change a destina tion; because it meant a change in the charges, and which mean the——

Q. Well, are you likely to lose money by these diversions, do you mean?

1547 A. No, but in order to have the shipments go through with out overcharge, it is necessary often to readjust the charges of the Santa Fe Company on a shipment that has passed off its lines to a certain destination and afterwards diverted to another destina tion. The percentage of the through rate changes often with the destination. For example, a shipment to Cleveland, that is diverted out of Cleveland to New York, will be delivered say to the Lake shore road at Chicago. The Santa Fe's proportion of the through rate is eighty-eight per cent. Now, if that shipment—if the desti nation of that shipment is changed to New York, then, the Santa Fe's proportion of the through rate is seventy-five per cent. So that it is necessary to turn over to the Lake Shore road in many cases the difference between seventy-five per cent. of the rate and eighty eight per cent. of the rate, in order to have the lines east of Chicago get their full share of the earnings when the freight is delivered.

By Mr. CALL:

Q. I understand from the instructions issued by the Santa Fe railroad upon the routing sheets and instructions to agents concern ing diversions, that diversions are not allowed to change the per centage of the through rate nor the percentage of the business. Am I right?

A. No; that is not in the sheet just in that way, Mr. Call. I think you misunderstand it. It means, in that diversion where the agent—that he must look out and see that the Santa Fe gets the long haul in the shipment, practically, unless there is some good reason to the contrary. That is what is meant.

Q. Well, doesn't it also mean that he cannot change the

1548 percentages of the other connecting lines.

A. No. But it means that in working, in making diver sions, changing destinations, that he will work as near to those per centages as he can, just the same as in the original billing, because it means a new destination.

By Mr. NORTON:

Q. Then, so far as the diversions are concerned, they are handled now by your company just as they were before 1900, before you routed?

A. Yes sir.

Q. But you think that on account of better telegraphic facilities they are handled more expeditiously?

A. And better organization of the system.

Mr. NORTON: That is all.

Mr. DUNNE: Does that conclude your testimony?

Mr. NORTON: Yes.

Mr. DUNNE: Now, this testimony has been, perhaps, technically offered by you, but I understand this testimony goes in for all purposes and for all parties.

Mr. NORTON: Yes. You might offer it for yourself.

Mr. DUNNE: There is no objection to that.

Mr. CALL: Well, how can it be otherwise?

Mr. DUNNE: That is what I understand.

Mr. CALL: If it goes in as evidence in the case, it is in the case.

Mr. NORTON: Oh, I thought you meant this. (Showing.)

Mr. DUNNE: No; all the evidence.

Mr. CALL: It necessarily goes in under the issues.

1549 WILLIAM SPROULE, a witness produced on behalf of the defendant, The Southern Pacific Company, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. DUNNE:

Q. Mr. Sproule, you are connected with the freight traffic department of the Southern Pacific Company, are you not?

A. Yes sir.

Q. In what capacity, Mr. Sproule?

A. As freight traffic manager.

Q. How long have you occupied that position?

A. Since 1898.

Q. And prior to that time, in what capacity were you connected with the department?

A. As general freight agent.

Q. And how long all together have you been connected with that——

A. Prior to that, assistant general freight agent, and before that, connected with the traffic department—for twenty years in all.

Q. And over what territory did your jurisdiction as freight traffic manager extend?

A. Directly over the Southern Pacific lines west of Ogden and

El Paso and south of Portland, what are known as the Pacific lines in Oregon.

Q. Are you familiar, in a general way, with the conditions
1550 prevailing in reference to the transportation of citrus fruit from southern California prior to the first of January, 1900?

A. Yes sir.

Q. Now, in a general way, what were the conditions prevailing in that behalf with respect to rebates?

A. The conditions for several years had been growing worse in that respect, until in 1898, it became a very serious question, and in 1899 became intolerable, so that some remedy must be had. Do you want me to explain at length what I mean by that?

Q. I wish you would, yes.

A. Well, the demoralization was one of development. At first, certain roads came in that hadn't been sharing in the orange business, and which by reason of their location would not readily obtain any material part of the traffic. They came into southern California and offered shippers a certain number of dollars per car, or on some similar basis, for every car that the shipper would send over their road. The effect of that was to divert the business from the lines that had normally been getting it and which were in the natural direction of the traffic, that it would take at the natural instance of shippers, owing to those being the lines that could render the most direct service—it was being diverted to these other roads that previously had little or no share in the traffic. The result of that was, of course, to immediately create consternation among the roads that were being deprived of it. It had the further effect of complicating relations with the car lines. Particularly so with respect to cars under refrigeration. The car lines had made their arrangements for refrigeration by the usual routes, the routes that the oranges
1551 normally took, only to discover that they were called on to refrigerate the cars by routes that the fruit had never taken, or had taken in such trifling quantity as not to count in the general result. With respect to returning the refrigerators, the car lines found, and the carriers that had the car lines under contract for car supply found, that the cars could not be got back with expedition. There was trouble about that. The roads having cut the rate in order to get business didn't have the same interest to get the cars back that they had to get the revenue loads. Out of that grew a condition, gradually, quite aggravated, in which the car lines made up their minds that if this thing were to be handled in that way there was no reason why the car lines should not get in and control the movement of these loads instead of having the isolated roads come in and do it for them. The shippers lent themselves readily to that, because instead of doing business with various roads and having to do a lot of reporting and accounting in connection with those deals, they could make their arrangements with one car line, that is, one of the several car lines that were engaged in the business. These car lines were prompted to enter into the deals, not merely

desire to control—to have some direction over the routing of
r own cars, but also out of a jealous desire to secure for the cars
represented an adequate share of the traffic. Otherwise the
peting car line might and would make these deals with ship-
and divert the business from them. The C. F. X. and F. G. E.
lines on our lines, for example, were bitter competitors. The
a Fe Fruit and Refrigerator lines operating on the Santa Fe and
the F. G. E. also operating on the Santa Fe were bitter com-
petitors, and each car line competed with the other actively.
So that their self interest forced them into this arrangement.
shippers took to it. I use the term "shippers" in a general
e. Whoever was the party that controlled the load in the car,
ther it was the actual consignor or the consignee or a fruit ex-
ge representing the grower, or whoever it might be that con-
ed the load. It had gradually got to a place in which the re-
thus created routed the car.

Now, let me ask you, if you will permit me to interrupt you at
point. You say the rebate routed the car. Through what in-
nentality or operative agency, as in the evolution of this practice
bating, was the rebating principally effected, through the roads
nselves or ultimately through these car lines?

It began with the roads themselves, the minor roads, roads
had not been in the traffic and desired to get into it, but by
on of their not being desirable routes found that it was necessary
ay the shipper a bonus in order to get him to use that road.
t was the beginning of it. The evolution of it, as I have said,
through the car line, then, finding that these arrangements in-
rred with their arrangements, firstly, as to refrigeration; sec-
y, as to the return of the cars, the car line having an interest in
so as to keep their cars as busily occupied as possible, in order
they might get the mileage out of them that would be necessary
nunerate them for the service of the car in the traffic. In the
geration, I should say their interest was that they had contracts
with the carriers. Speaking for the Southern Pacific, they
had a contract with us, under which they were liable for the
refrigeration and for any damages resulting from failure to re-
rate. They were responsible to the growers directly, and to us
rectly, because we stood back of the shipper if the refrigeration
imperfect. Hence, if these cars were being taken off the routes
which they made *made* their arrangements for refrigeration,
g the routes the shippers had hitherto used, and which were
rally recognized, it interfered with their arrangements con-
ly. Having made their arrangements, then, with one set of
s, they had to turn around and make new arrangements with
her set of roads, perhaps on a notice entirely inadequate or no
e at all. The shipper would simply tender this car and say he
ted it routed a certain way. That, then, was the motive as to
geration. The shipper paid the car line for the refrigeration.
t is the only service on the part of the car line in the orange

trade for which the shipper has to pay—for the car. If it moves under ventilation there is no charge made to the shipper for the use of the car. But, on the other hand, on those cars, too, the difficulty was to get them back. Keeping the cars moving in this service is an endless chain. Not only must they be loaded and go out, but they have got to be kept moving in both directions. And the interest of the car owner, the car line, in that car, is to keep that movement continuous. And we cultivate that, because it helps us to get the cars back. But, under those conditions neither we nor the car line could get the car returned with equal promptness, because the business was done on a basis that caused the roads handling it to feel that they were not warranted in giving the empty cars satisfactory service,
such as Mr. Hibbard has just described for the Santa Fe. They
1554 said it was too expensive, and so the cars would move along
the same as any other empty returning home, which was entirely ineffective for our purposes. The consequence of that, on the other hand, was that under that system there was every season a cry, pronounced cry, of car shortage and car famine. Now, as to the agency through which it was done. The evolution of it was that it was easier for the party owning or controlling the carload of oranges to do his business with a car line than in any other way, and he just followed the line of least resistance and did it that way. Further, he came more into contact with car line men than he did with others, because all the refrigeration was done through him and it was an easy and natural way of doing it.

Q. Well, then, by a sort of natural selection the car line owner became the final actor and agent in the matter of rebatings to the shipper?

A. Yes sir. And the car owner, on the other hand, was forced into it largely by force of circumstances, as I have described.

Q. Exactly.

A. Growing out of that, he got into a place in which he became a competitive solicitor of rebates—or, in order to obtain the money wherewith to pay rebates. And he worked with all connections, on the basis of either so much per car, or an excess of car mileage, or some other device, generally car mileage, that would give the money to pay the shipper. Now, that developed until our position became intolerable, as I have already said; because, while the Santa
Fe has its own rails from southern California to Kansas City,
1555 the Southern Pacific has not. At Ogden and El Paso we
join with the rails of a dozen different lines to Kansas City; to Chicago, with twenty different lines. The Santa Fe, all this time having their own line to Chicago. Consequently, when this demoralization spread, we had all those ten, twenty, and thirty lines on top of our backs, saying: "What on earth do you mean by this? You stand with us for maintenance of rates, and yet in the business that you are assumed to control there in southern California, by some device that you have there that we cannot understand, you have created a condition of demoralization that is unparalleled in

the United States." And it reached the point of friction with our connections, and serious friction, so that it was likely to involve our general relations. The general routing situation was threatened. The Santa Fe meeting the competition of the lines that connect with us at El Paso and Ogden, and then our connections, believing that they were meeting the Santa Fe competition, would pay a little more in order to hold onto their traffic; and so there was a game of see-saw going on there in oranges with car lines and rebates that produced such a result that our connections came to us and said: "Here, Southern Pacific. You can no longer stand aloof and claim that you are not a party to this demoralization of the orange traffic. The Santa Fe is in this through their car line with both feet." We say: "All right. We can't help that. The Santa Fe, we assume, naturally have to defend themselves. They have got half of this traffic on their own rails anyway. They are not going to let that move onto our rails in addition to that that is tributary to our lines in southern California." "But the Santa Fe meets that situation east of Albuquerque."
1556 That was the position we took for a good while, that the competition of the lines east of Ogden and El Paso was with the Santa Fe line east of Albuquerque. I would explain that from Los Angeles to El Paso is, in round figures, 800 miles. From Los Angeles to Albuquerque is 900 miles. From San Francisco to Ogden is in round figures 900 miles, and so, Ogden, Albuquerque, and El Paso have generally come to be considered as a meridian. East of Albuquerque is competitive with east of El Paso and east of Ogden. West of Albuquerque is competitive with our line west of Ogden and west of El Paso. We use that in rate making and such work as that. But, when it got to paying thirty-five and forty-five dollars a car refunds on oranges to New York, and got to the point where some roads went out of the business because they said they could not afford to be bled any longer, other roads insisted upon our protecting them against what they termed blackmail, the contention made by our connections then was that as long as the Santa Fe was in with its line, it had a through line from Los Angeles to Chicago that competed with our through line from Los Angeles to Chicago, whether via Ogden or via El Paso, and that we must stand in with them and meet the situation. From the beginning the Southern Pacific declined to participate in any rebates, and our answer to our connections at that time was that we would not join in this illicit work which we had from the beginning contended against, had used our utmost efforts to avoid, and that we would not begin to violate the law. Following upon that, we asked our immediate connections to join us in a conference for the purpose of devising some plan of meeting their contention in restoring rate conditions, although we could not
1557 do it by the rebates plan. We did it because—at that time, because many of these lines, it was known to us, had remained in the business simply because they looked from month to

month and from day to day for an improvement of conditions in which they would get tariff out of this business, and that they didn't want to go out of it and then when rates were restored to normal condition find themselves out of a traffic that they had enjoyed for years. We met together. They were emphatic in their demands for relief, and finally we said this to them: There is no way to meet this situation but to undertake to assert the right, which we have always reserved. On the face of our tariffs there stood a clause that the initial carriers reserved the right to route. We undertook, then, to cancel those tariffs, and, in lieu, to issue one in which we would assert and act upon the right to route. We did so. We told our immediate connections that we had called them into conference because we contemplated action anyway, but we wanted them to fully understand it, so that they should not feel that there was any attempt on our part to arbitrarily change the channel of the business or to take snap judgment on our connections. That was a natural thing to do in all important changes in rate conditions. We had to consult our connections, because through tariffs are matters of comity and arrangement. A through rate is made by co-operation of our connections. We cannot ignore them.

1558 Thereupon, effective January, 1900, we took charge of the routing, and have maintained it since.

Q. Now, permit me to ask you just there. You have spoken here of the competition of the Santa Fe exercised through the medium of its car lines. Do I understand you to say that the car lines operating on the Santa Fe rails, as was suggssted here this afternoon, did pay rebates or make concessions?

A. Yes sir. They had to or they could not get any share of the business.

Q. Now, then, was the demand made upon you by your eastern connections that you should follow suit with the Santa Fe and make rebates yourself in order to meet that condition and that competition?

A. They wanted us to join them in meeting the competition as they found it. The competition that our connections found was as much the competition of our other railroad connections, their competitors although our connections, as it was the Santa Fe. But by this time the demoralization had spread so that there was no line handling oranges except the line that would pay these rebates, whether by car mileage or other devices; generally, as I have stated, car mileage. It can be laid down that every road east of Ogden, El Paso, and Albuquerque that was handling oranges was being bled.

Q. Now, you say that your connections appealed to you to relieve them from that situation.

A. Yes sir.

Q. From being compelled to submit to these rebates?

A. Precisely so.

1559 Q. The idea was the restoration of a normal tariff, was it not?

A. The restoration of the tariff that they had joined us in making and out of which they expected to get their stand—their regular percentage of revenue in accordance with the current division sheets. Instead of that, there was a published tariff under which they were supposed to be doing the business, and in relation to which the effect of it was that it was another tariff altogether, because there had certain slices to be cut off of it in order to pay these illicit rebates, and the business, consequently, was done by our connecting roads, at a reduced figure, lower revenue.

Q. Now, to relieve that situation and demoralization, the initial carriers undertook to make effective the right of routing the commodity over the connecting lines?

A. For that reason, and for the reason that we did not want ourself to be drawn into those practices.

Q. Yes. Now——

A. And for the further reason, of course, as I have already said, that it complicated our entire relations with connecting lines and impaired our own ability to handle the traffic.

Q. Now, Mr. Sproule, was there any relation of any kind between the system of routing under the exercise of the right of the initial carrier to *rought* as made effective by the tariff of January, 1900—was there any relation between that condition of things and the existence of any tonnage pool among any connections whatever of yours?

A. None whatever, sir. That tonnage pool is a myth, from
1560 the beginning.

Q. Did it ever have any existence?

A. It had no existence. What do you refer to now? To our connections?

Q. To your connections?

A. It had no existence whatever. Let me explain. As I have heard this stated in various ways here, the suggestion has been made that we were a party in some way to a tonnage pool between our immediate connections. Now, our immediate connections—am I correct?

Q. Or any connections.

A. Well, any connections. Well, we haven't got any pool with any connection.

Q. Precisely. Now, Mr. Sproule, you are familiar, generally speaking, with these percentage or distribution sheets which have been referred to here?

A. Yes.

Q. And such sheets have been offered in evidence. Now, will you explain the basis, or principle or rationale of those percentage sheets that were issued by the Southern Pacific Company both prior to and during 1900 and subsequent to 1900?

A. Well, when we undertook to control the routing, we—the agent of the Transcontinental Bureau, Mr. Countiss, was authorized by me to send a letter to every one of our connections to state that a new

tariff would be issued on citrus fruits. I should explain, perhaps, that the Transcontinental Bureau is simply a publication office. It is a clearing house for information. That is to save printers' ink,
and is used by all the roads west of the Missouri river that
1561 engage in transcontinental traffic. It is used for that purpose.
I authorized him to write a letter to each of our connections, stating that the present tariff would be cancelled and a new one issued, covering citrus fruits. That to this tariff only such roads would be made parties as would enter into an undertaking to maintain the tariff absolutely, without any refund of any sort by any device, whether to shippers, consignees, connecting roads, or to car lines; and that if the answers were evasive that they would be considered as in the negative. That was the only provision we called for, and the only provision we wanted. I have the correspondence with me at the hotel, copies of it, *it if* be desired to have it here.

By Mr. CALL:

Q. Well, it is substantially the same as already introduced?

A. Except that it is much more voluminous, because I have all the letters.

By Mr. NORTON:

Q. Is this the letter you speak of, Bissell's Exhibit 13?

A. Yes sir.

Q. That was sent out by Mr. Countiss?

A. That was sent out by Mr. Countiss. Well, there was a volume of correspondence ensued upon that. Some roads expressed themselves frankly as very glad that we had taken the thing in hand and they gladly complied. Others, who thought it was not a good thing for them, would perhaps try to evade it and give a qualified assurance, which was not accepted, that leading to an interchange of
correspondence. Consequently, when the first tariff was is-
1562 sued under this arrangement, there were several roads omitted
that afterwards came in, and subsequent issues of the tariff became necessary to include them. Gradually all important roads came in.

Q. What do you mean by "coming in"?

A. They gave their concurrence to that pledge.

Q. Promised that they would not rebate?

A. Promised that they would not rebate. That is all the pledge that we asked for or desired, and was the only condition for joining in that tariff. And as soon as we put it in effect the abuses as to the rates stopped.

By Mr. DUNNE:

Q. So far as you know——

A. So far as we have any knowledge.

Q. —have any rebates been paid in the citrus fruit business since

the tariff—with this condition that the right of routing should be reserved to carrier?

A. I have every reason to believe that from January 1st, 1900, until this date there has not been a nickel paid on citrus fruits.

Q. Nothing of that kind has been brought to your notice?

A. It has completely stamped it out.

Q. Is it a fact, so far as your observation goes—I think there is some testimony to that effect here—that prior to the enforcement of this routing rule, generally speaking, every carload of citrus fruit paid more or less in rebates?

A. In 1899, I doubt whether there was any carload of citrus fruit that moved out of southern California without somebody getting a rakeoff on it, although the shipper himself might not get it at all.

1563 Q. Now, Mr. Sproule, after the publication of the tariff with the condition annexed that the right of routing should be the right of the initial carrier, to what extent was a latitude permitted the shipper in the matter of routing the commodity?

A. Well, in the first place, the routing instructions that we gave our agents themselves carried a great deal of latitude.

Q. In what respect?

A. Because a large and important factor in determining the routes and the percentages which have been talked about here was the routes that the fruit took when the shippers themselves routed it, first, under normal conditions; secondly, under the expansion of routes that occurred when illicit means were at work. We took consideration of both those factors. In addition to that, we took cognizance of the special facilities in the deliveries of various lines. For example, at Philadelphia we would find that the Pennsylvania road was a very strong line. At Baltimore we would find that the B. & O. was a correspondingly strong line. In determining the routing over the Pennsylvania line to Pittsburg, we took note of that, determining the routing over the B. & O. into Baltimore, take note of that, and allow for it. Then, we take cognizance of the desire of the shippers themselves in terminal deliveries, and, so far as they had shown a reasonable preference that was not based upon an illicit manipulation of the rate, we took cognizance of that also. And whenever a shipper said to us, "I want my oranges to be delivered at a certain point upon the rails of a certain line, be-

1564 cause the consignee's warehouse is there, or my agent's warehouses, or within a short distance of it," we would give them that routing. Anything reasonable that he desired in the way of terminal routing, delivery.

Q. Is that what you call "preferred delivery"?

A. That is where they expressed a preference for delivery, and we call it a preferred delivery, in abbreviation. Further, in order that their diversions might not be interfered with of the fruit in transit from one destination to another, or to several successively, the right was given them east of El Paso or Ogden, as the case might be, to

designate the gate-ways through which they wished that fruit to go, the only restriction upon that being that the gate-way must be served by two or more railroads. Otherwise they would have consigned to local points and defeated the routing plan. For example, if a shipment was to move through Kansas City—was to move to Chicago through El Paso, the shipper would state that he desired it go through Fort Worth and Kansas City, we would respect that; the car would go through those gate-ways, and we would route it by roads that naturally brought the fruit over those lines.

Q. Mr. Sproule, in distributing tonnage, citrus fruit tonnage, over the connecting lines, as manifested in these percentage of distribution sheets, what were the moving considerations upon which the various allotments of percentage were made?

A. Well, there were several, as there are in the routing of all business that we control. As to oranges, there were perhaps half a
1565 dozen. I have mentioned one or two of them. First, the routes the oranges took when the business was done under a normal basis, or, you might call them the direct lines that were originally in the traffic and as the orange traffic developed still remained in and got a large share of the business. Secondly, the routes that were formed by the shippers under those competitive conditions that I have described when the rebate routed the oranges. That enlarged the number of roads handling the oranges. We felt that in ourselves taking control of the routing that it was unwise, both toward our connections and towards the shippers and the public, to cut off the roads, or any of them, that had hitherto been enjoying a share of business, and we recognized them as factors in it, our statement to all of them being that we would simply aim to do as well for them in the maintenance of rates as they were doing for themselves under this system of which they complained and against which they rebelled. Thirdly, the question of facilities for delivery.

Q. You mean the facilities and service of the connecting lines?

A. The facilities and service of the connecting lines. Well, the question of facilities and service entered into the two preceding considerations that I have described; but, in addition to that, was the question of the terminal facilities. For example, at New York, the Erie railroad has an elaborate fruit terminal, the finest in New York, one specially built for the California fruit trade; and a favorite one with the shippers. For us to undertake, for instance, to throw that fruit business to the Pennsylvania road instead and compel the shippers to take delivery from the Pennsylvania and ignore
1566 the Erie, would have been disastrous alike to ourselves and to the shippers. It would have created a crisis in the trade. So, wherever we found conditions of that sort, in however modified a form, we took cognizance of that. Then there was the question of—in all those there that I have mentioned was involved, of course, the question of service on the fruit. The fourth was the question of getting back the empty. The oranges themselves are given at all times a preferential service. East-bound, the service on oranges is

the best that is given on anything except passengers. Now, you can readily see that if that is the case on the east-bound load, we must have a quick service on the west-bound return car or we will run out of cars at this end; the chain will break, and when it breaks there are no cars to bring west, and so a car famine ensues. The question of car famine was a very serious factor.

Q. Did you aim, in allot-ing these percentages, to follow the natural and normal drift of the traffic, having regard to the question of service and facility and the interest of the shipper?

A. Yes sir, but bearing in mind as well the fact that the shippers had themselves shown a preference for certain routes, and we didn't undertake to shut those routes out when we took charge of the routing.

Q. Now, then, the conditions that you have been describing cover the period of time subsequent to January, 1900, do they not?

A. January 1, 1900.

Q. Did you, since you exercised the right of routing, send any of this citrus fruit over impracticable roads, roundabout, in the
1567 sense of being impracticable?

A. No sir.

Q. Did you send this——

A. If such a thing was done, it would be by inadvertence; and if done, we would undoubtedly have a claim for that car, and just as undoubtedly we would have to pay it.

Q. Yes, but I refer now to the conscious system pursued by the company since the inauguration of the routing by the initial carrier?

A. The intention at all times has been to give the public an adequate service.

Q. Some question has been suggested here as to the matter of good faith. Was there any time, since the first of January, 1900, when as part of its system of routing the Southern Pacific Company sent any citrus fruit cars over impracticable or insolvent routes?

A. Well, I don't know of any insolvent routes, and we would not intentionally send any fruit over impracticable routes. Our own interest in the traffic would suffice to prevent that, and our own liability, in the second place.

Q. In dispatching or routing fruit over any particular line from the point of origin to the point of destination did you always keep in mind the perishable nature of the commodity?

A. Necessarily.

Q. Now, what has been the practice, Mr. Sproule, of the company, in the distribution of citrus fruit from the point of origin, since January, 1900, with reference to routing, so far as practicable, orange shipments over the most direct routes? What has been your practice in that regard?

A. Well, I don't know just what you mean to convey by
1568 "the most direct routes." If you mean that we were to throw all the orange traffic on the shortest line, that would be giving it to the most direct route. But that is utterly impracticable.

Q. I quite understand that.

A. The business is distributed among the lines that serve the territories the oranges are to reach, and while—and it is the custom among railroads for the longer line to approximate the time of the shorter line. For instance, if we routed oranges from Los Angeles through Ogden to Chicago, we have to make approximately the same time that the Santa Fe makes by its time from Los Angeles to Chicago. They have to approximate the time that the Rock Island makes by its shorter line from Los Angeles to Chicago. The question of the number of miles does not govern the question of the practicability of the route. It is the service that controls. Otherwise the short hauls of the country would be doing all the business and the long hauls would be out of it except for the local traffic. The contrary is the case, however. If they give the service, they all have an equal show for the business.

Q. What I have more particularly in mind is this: Have you selected, in routing this citrus fruit, roundabout routes as against one shipper and more serviceable routes and more expeditious routes in favor of another shipper, operating a discrimination and a prejudice?

A. No sir.

Q. Has that sort of thing occurred?

1569 A. No sir. And if it appeared that such a thing were done it would go hard with the officer that undertook it. To begin with, it would be a very unwise thing. In the next place, I don't know what would be the incentive for it. And in the third place, it is not a thing that could be done without the immediate knowledge of the public and of the people affected; and it is a thing that is easily demonstrable. But there is no discrimination whatever as between individuals or shipping companies or destinations.

Q. Now, with respect to the right of diversion, that right was very freely exercised by the shipper prior to January, 1900, was it not?

A. Yes sir; and that has continued to be very freely exercised ever since, and is today.

Q. Was it not the freedom and facility with which the right of diversion was exercised by the shipper that gave rise to the epithet "tramp car," as applied to cars of oranges that went out from southern California?

A. Yes sir. The exchanges, for a long time, and subsequently other shippers, to protect themselves, habitually forwarded their cars to a false destination.

Q. A hypothetical point?

A. A hypothetical point.

Q. And between the hypothetical point and the point of origin the car was diverted freely at the instance of the shipper in search of a possible market; is that correct?

A. Yes sir; diverted many times, half a dozen times, in transit.

Q. And it was the movements of that car in that way that gave rise to the epithet "tramp," was it not?

1570 A. Yes sir.

Q. Has the same freedom of diversion been permitted the shipper since the tariff of January, 1900?

A. Precisely.

Q. By the way, Mr. Sproule, since the right of routing was insisted upon by the initial carrier in January, 1900, do you know whether any different system has come into being and operation in southern California in the marketing of the product? Whether there has been a merger of shippers?

1571 A. Well, I don't think there has been exactly a merger of shippers, but the California shippers have recognized that this perpetual and successive diversion of cars in transit instead of being a gain to them has been a demoralizing factor, and that they have entered into some sort of arrangement whereby the fruit shall be marketed through one selling agency, to the end that in distributing it in the East an undue number of carloads shall not go to any one destination at any time, but only so many as that market will take. In doing that, they can ship a very large percentage of their cars direct and thus avoid the diversion in transit, and incidentally avoid the delays that ensue to those cars and to the cars in those trains by the diversion.

Q. This selling agency is an association, is it not, here in southern California?

A. The selling agency, I think is a corporation.

Q. Corporation. And does it not control almost all of output, the citrus fruit output?

A. It sells the output. The shippers—the shippers control it individually. But, as I understand it, they each of them, for the greater part, undertake to market the fruit through this selling agency so as not to have a number — competitive selling agencies but have a co-operative one.

Q. But what I mean to say is there is a merger in the sense that almost all citrus fruit growers have coöperated, through the medium of this selling agency, in putting their commodity upon the market, have they not?

1572 A. Yes sir, and for the purpose of other economies.

Q. The point I desire to direct your attention to as a railroad man is this: What has been the effect of this new method of marketing the commodity upon the relative importance of the right of diversion?

A. It has greatly minimized it.

Q. Mr. Sproule, with reference to this question of delay in transit as affecting citrus fruit coming out of southern California, how do the conditions in respect of delay in transit prior to 1900 compare with the conditions subsequent to 1900? I mean the ordinary and ruling conditions before and after?

A. Well, in 1899, we had a great deal of complaint about delays

in transit, and that was because in 1899 we were feeling the effects of the foreign wars in which the United States had engaged. In 1899 the congestion really began. In 1900 the congestion became more marked. In 1901 and 1902 it gradually grew until at the end of 1902 it was very serious indeed. In that congestion the citrus fruit shared to some extent, in this way, that while we gave it the same zealous and preferred service as before, yet we were not able, nor were our connections able, to make as good time as before; but the time we did make required greater effort and was accomplished with greater difficulty and under more adverse conditions than when we made the fast time in 1897 and 1898.

Q. Well, now, as compared with other commodities, was there any relative impairment or diminution in the expediting of citrus fruit to market during these periods of congestion?

1573 A. We have never, at any time, guaranteed a service on oranges. All that we have undertaken to do is to give it a preferred service, the best service that we would of any freight that moved. And relatively to the other business done subsequent to January 1st, 1900, our service was equally as good as prior to January 1st, 1900. Relatively. Our effort was no less, our success was no less, although the time itself was longer.

Q. Where were these conditions of congestion most severely felt? Among the eastern connections or west?

A. Most severely felt as we get to the Missouri river and east; and the further east the freight went the worse the condition.

Q. Were those conditions of delay in transit in any way related to the enforcement of a system of routing under the control of the initial carrier?

A. I would rather state that the other way. If the conditions of 1899 had continued into the subsequent years, the citrus fruit business of southern California would be in a condition of collapse, because the service would have been so bad it would have been simply impossible to get back empty cars. The cars would not have been here to take the business, and naturally under the demoralized conditions of 1898 and 1899 the carriers could not afford to undertake to give it the necessary preference.

Q. Well, Mr. Sproule, some stress has been laid here by some witnesses upon the historical coincidence that at the time of the institution of this routing system complained of in January, 1900, and into the season of 1901, there were delays in transit. I ask

1574 you if, besides being a historical coincidence, there was any casual or responsible relation between the conditions of delay and the routing system itself. In other words, did the exercise of the right to route by the initial carrier bring about these delays in transit, or were they imputable to other causes?

A. They were imputable to other causes. Under conditions of pressure, the initial carrier has more influence with its connecting lines than any private shipper can have, because he has got more business to give and there is more involved in the general business.

With the individual shipper it is a mere question upon the part of connecting lines as to whether his particular business is worth taking especial pains with under exceptional conditions. Where the initial carrier routes it it is the whole business of that carrier, and his influence and control of an immense business that comes in to play.

Q. Well, then, so far as the right of routing is concerned, is not the initial carrier exercising that right placed in a position where he may control, more or less, proper service, proper facilities, proper return of empties, and proper settlement of claims, the general receprocities between companies—isn't he in a position better to enforce those proper things against his connecting carrier than if he didn't exercise the right of routing?

A. I should say that the direct effect of the routing by the initial carriers makes for efficiency. Demoralization always makes for inefficiency.

Q. Now, then, with respect to the settlement of claims with your connecting carrier, by whom have those settlements been made since January, 1900?

1575 A. They have been made by the initial carriers, so far as the Southern Pacific is concerned.

Q. You have not relagated the shipper to the connecting carrier where the delay in transit or the loss occurred on his line?

A. Where it was a loss for which the carriers were liable, had been liable. We have assumed that as we direct the routing that the shipper will look to us. Further, we have been prompted to that directly by the fact that we have for our competitors a road that has its own rails from Los Angeles to Chicago. Now, we take two or more roads to reach Chicago. It won't do very well as a competitive matter for us to slice up our road into two or three or four or five sections and tell the shipper "You go and locate your losses over on that section over there. We will wash our hands of it." We recognize we are competing all the way to Chicago, and we pay it ourselves as a competitive matter.

Q. And afterwards adjust it yourself?

A. Yes sir, and afterwards adjust it ourselves. The claims we paid in 1900 and 1901 we have not got our money for yet.

Q. Now, you have stated here that you have not operated by way of discrimination or prejudice against any shipper in the exercise of the right of routing?

A. That is absolutely true.

Q. I will ask you, in the exercise of that right, or in any percentage or distribution allotment, have you accorded any special advantage or favor to Porter Brothers? Is that true?

1576 A. No sir, we have not.

Q. In what respect have routings to Porter Brothers been modified, if at all, in reference to the routings that they had before the tariff of January, 1900? Have there been any changes in their routings by way of special advantage to them?

A. By way of special advantage to them——

Q. Yes.

A. —no. Porter——

Q. Please state briefly the situation and condition with reference to Porter Brothers in this matter of routing.

A. There was no exception with respect to Porter Brothers, except that Porter Brothers for many years routed their business over the Union Pacific, Chicago & North Western, or Chicago, Milwaukee & St. Paul, and east of Chicago over the Erie. They did that before there was any demoralization in the orange business. In fact, they were the old original shippers over that route. They built their fruit houses on the North-Western, St. Paul tracks in Chicago. They had their fruit houses in New York on the tracks of the Erie. During the period of demoralization, instead of switching around to other lines, they remained on those roads. And in going over the question of routing, and knowing, as a matter of fact, that their warehouses were on these roads, we instructed—or I gave instructions that they should route Porter Brothers' business that way. They routed their cars almost uniformly to Chicago, then from Chicago they routed them beyond. And their routings are always Erie. And we told Mr. Neimeyer in Chicago to accept their Erie routings.

1577 Q. That was merely a repetition of preceding conditions, was it not?

A. That was merely a repetition of preceding conditions; and the same as we did with other people. Erie was their preferred delivery, in other words. And the Erie road ran from Chicago to New York, and at the end of it was the Porter Brothers' fruit house. For us to undertake to send that business by some other route would do just what in all these preferred routings we have avoided doing.

Q. Then it has been your policy and practice to accord to the shipper these preferred deliveries for his own convenience?

A. Yes sir, from the beginning; and we change them from time to time when the shipper indicates that another routing is the one that he naturally ought to have.

Q. Now, in case there was a terminal delivery by a given shipper at a given point of destination and the delivery line was not convenient so far as access was concerned to the warehouse of the consignee, for example, but there was switching connections between the delivery line and some other line to which his warehouse was quite accessible and convenient, in arranging the convenience of delivery with the shipper did the company do anything in the matter of such switching as that?

A. The first season there was complaint made on that subject by people whose warehouses were convenient to the tracks of one and inconveniently located with reference to the tracks of another of the terminal roads at an eastern city, and we sent our assistant

1578 general freight agent in charge of this territory east to go to the various point- of which complaint had been made and de-

termine whether we could not have an interchange switching arrangement there so that if the car did get it on the rails of one company it could be switched over to the rails of the other company so as to suit the convenience of that consignee, and incidentally of the shipper that sent the oranges to him. And we brought that about wherever it was practicable. And wherever we could not bring it about we changed the delivery to fit the requirements of the consignee.

Q. Now, Mr. Sproule, I will ask you generally whether since January, 1900, under this system of routing, any shipper has ever received any advantage or has been subject to any prejudice as related to any other shipper in the operation of the transportation business of the company?

A. None whatever.

Q. Have you ever authorized or instructed your subordinates to extent any advantage to one shipper or to subject another shipper to any prejudice?

A. No sir.

Q. Have you ever authorized or instructed any such proceeding.

A. No sir.

Q. If so, it would be against the policy and the rules of the company, would it not?

A. It would; and it would be greatly against a man that undertook to do it.

Q. Yes sir. Now, let me ask you another question. Have you ever——

1579 A. Those are methods, by the way, that are obsolete, completely, very happily.

Q. Have you ever, Mr. Sproule, since January, 1900, or at any time during the course of these percentage allotments, the extension of these percentage sheets—have you ever reduced, or indeed withdrawn, percentage allotments to any particular connecting line?

A. We have reduced and changed percentages from time to time, as the exhibits on file in this case will show. I have one case very clearly in mind. Last year, the Rock Island opened its new line from Chicago to Kansas City and El Paso—opened it, rather, the previous fall—and were in the field for all classes of business. We gave them oranges at El Paso, as they were the short line for Chicago, and found after a while that they were not making the time, and on prodding them as to their difficulty found that they were not in physical condition just then to make the time, for their line west of Dalhart, that is, the western end of their rail line from Chicago to El Paso, so we diverted the business from them and turned it over to the T. & P. that could make the time.

Q. Yes.

A. We diverted a portion of it altogether, and a considerable portion of it we gave back to them at Fort Worth, because we found

they could make the time from Fort Worth. It was the western end of their line that was in trouble, not their eastern end.

Q. Now, while we are on the subject of routing, do you recall an instance in which you declined to route a car as requested by Ruddock & Trench?

1580 A. I do, sir.

Q. What are the facts in that respect?

A. We refused to route it and protect the through rate. The facts are that on August 16th, 1902, it tendered this company a car at our Covina station, C. F. X. 10,281, loaded with oranges, and gave us a shipping order routed via Southern Pacific, Union Pacific, Chicago North-western railway, destined to Chicago. They wanted this route—wanted us to accept the car, send it by that route and give them a bill of lading at the current rate of a dollar and a quarter, which is contingent on the initial carrier's controlling routings. We declined to accept it; said that we could send it forward either at our regular rates to Ogden, assuming no responsibility beyond Ogden, or that we would ask them to withdraw those specific instructions and allow us to route the car. On August 16th, 1902, consequently, this letter came to use from the shippers, Ruddock, Trench & Company, from W. O. Randolph, addressed to "Mr. G. A. Parkyns, A. G. F. A., Southern Pacific Company, Los Angeles. Dear Sir. C. F. X. car 10,281, now on tracks Covina, loaded with oranges, which we have tendered to your company, routed via S. P., U. P. and C. & N. W., destined Chicago. We have reasons for this route, and unless it is accepted and billed accordingly, we will allow the car to remain on your tracks indefinitely, holding your line responsible for loss due to any delay in its movement. We understand from our Covina agent that your agent there has declined to include this routing on bill of lading, which we insist on, and trust you will see fit to wire your agent accordingly. Otherwise, we will take no further action in the disposition of this car. Yours truly, Ruddock, Trench Company, by W. O. Randolph." It

1581 was a car that was intended for a test case. It was so generally known by the trade here. And we sparred back and forth.

Q. For how long?

A. Oh, I think for two or three or four days. And finally we sent the car forward to Ogden as we had originally told them that we would do but they wouldn't hear of our doing. But rather than let the car rot on the tracks, as they sent verbal word to us they would do, we sent the car along at the regular rate current to Ogden. When it got to Omaha, we heard through third parties that they had stopped it, and finally it got to Sioux City, being diverted in transit. That car is now the subject of litigation in the United States court at Sioux City.

Q. That was a case in which your right to route was formally challenged?

A. Formally challenged——

Q. And you so regarded it?

A. —and it was generally so known in the trade. It was not a car tendered to us *bona fide*.

Q. But where cars have been tendered you in good faith, has it not been the aim and policy of the company to accom-odate the movement of that car as far as practicable to the wishes of the shipper?

A. Yes sir. This was a car given to us on rigid instructions, and it was purposely left there standing on the tracks. It would be there yet if we hadn't taken some action.

Q. Mr. Sproule, how is it that the right of the initial carrier to route has been more specially insisted upon in reference to
1582 citrus fruits than to other commodities going out of southern California or out of California generally?

A. Because there is no business in which there was so serious a necessity for action. In the case of other freight we have the remedy largely in our own hands, because the tariff provides on general commodities both east and west-bound, by a special clause in the tariff, that the rates apply over the following roads to the extent to which we have authorized divisions with those roads. Now, then, if on a given commodity a certain road undertakes to cut the tariff and we find them demoralizing the business, we simply cancel divisions with that road, and that cancellation of divisions automatically shuts them out of the tariff, and in that way we regulate—we keep some measure of control of the business; but in the orange business the demoralization had become so universal that if we were to say that we would have no roads left to carry the oranges.

Q. Now, you have said here that in the final evolution of this question of rebating the car line became the active instrumentality?

A. Yes.

Q. As I understood you. Those car lines didn't carry general commodities, did they, Mr. Sproule?

A. No sir.

Q. And it was the citrus fruit almost exclusively that was carried in those car-lines?

A. East-bound, wholly. Well, I would not say "wholly," because under the same contract we had provision by which they carried deciduous fruits also, and vegetables.

Q. But the principal item of freight carried by them was citrus fruits, was it not?

1583 A. Yes sir. They were a special car adapted to a special traffic and not put into any other.

Q. Now, these special cars adapted for the traffic of carrying citrus fruit and operated by private car lines so called—those were the cars as to which the rebating proposition was active and as to which the demoralization had arisen?

A. Yes sir.

1584 Q. And it was out of that that you came to exercise specially the right of routing in the matter of citrus fruit, out of those conditions, was it not?

A. Yes sir.

Q. That is the necessity which you speak of. If a similar necessity, Mr. Sproule, should arise in respect to other commodities, the railroad company would exercise the right with the same directness, would it not, and the same insistence?

A. The same—I—we undertook the control of the routing with a good deal of reluctance. We would do it on other commodities with a good deal of reluctance. But if the same condition developed in any other commodity, so that it were the only remedy left us in order to maintain the tariff and obey the law, I don't see that there would be any other recourse left for us.

Q. If I may be permitted to say so, there is some suggestion in the opinion of the Interstate Commerce Commission, the prevailing opinion, in which the exercise of the right of routing by the initial carrier as directed to a special commodity, oranges, for example, is somewhat dwelt upon. I now ask you if it is not a question of different conditions affecting the orange or citrus fruit which do not affect other commodities?

Mr. CALL: I would suggest that your questions are altogether too leading.

Mr. DUNNE: Yes.

Q. Without asking leading questions, and to make this matter as brief as possible, as between citrus fruit on the one side and
1585 other commodities generally upon the other, did the same conditions exist in respect to rebating.

A. If I understand the drift of your inquiry, perhaps I can answer it in this way. If I am not answering your question, correct me. With respect to oranges, there is a very large tonnage to move within a very limited time. It requires a special car, which is sweet, clean, dry, free from smells. It has to be large enough to accommodate the traffic, and with special icing facilities to carry the requisite ice. East-bound it can be used only for that class of business. West-bound it has to be hurried to California so insistently that there is time left to load only a very limited number of the cars. On our line, something like 22 per cent. Into those cars no loads may go that will in any way taint the car, because shippers would not load oranges into it if it were tainted. If, for example, we loaded mess beef, or packing house products generally, or sweet-pickled hams, the shipper would not load that car with oranges. The consequence is that for that traffic we have to provide a large number of cars. Our present contract calls for 5000. Not less than 5000, if we call for that number. That means that for ourselves to supply cars for that business we would have to invest between $5,000,000 and $6,000,000. Now, the interest on $6,000,000 at five per cent. is $300,000, which would be the fixed investment on

that equipment. The greater part of it would be idle two-thirds of the year. That makes our furnishing of the cars for that business largely an impracticable matter, because there is too large an investment for the amount of business done, and that because the investment lies idle so much of the year. We are here on the western end of this continent. There is no
1586 other business into which we can put those cars profitably for the greater part of the year without getting them scattered throughout the United States so that we could not get them back when we want them. And growing out of this has arisen our plan of making a contract with car line or car lines to supply us the necessary equipment. This is done to meet the special conditions of this special traffic, and not with any desire to interject a third factor into the business. Further, there is a large portion of the citrus fruit traffic that is done under refrigeration. Now, refrigeration is a matter apart from transportation. It requires the—refrigeration of perishables requires an elaborate system that extends over all the leading lines in the United States. It requires expert knowledge to determine to just what extent these cars should be refrigerated, when they require ventilation in conjunction with refrigeration; and we hold that the refrigeration is a separate matter apart from the carraige. We are not refrigerator men; we are common carriers. The refrigeration of a load is a separate matter, and we make a contract with the car line by which they become liable to the shipper for the proper refrigeration of the load.

Q. Now, is it not a fact, Mr. Sproule, that the question of rebates and the demoralization resulting from such rebating—that that question has been a matter of citrus fruit rebating?

A. Yes sir, and has not entered into any other business.

Q. Or other commodity.

A. Other commodities, in like manner.

Q. Has there ever been, or is there now, a tonnage or traffic
1587 pool in citrus fruit in California between the Santa Fe system and Southern Pacific system?

A. No sir.

Mr. DUNNE: That is all.

Cross-examination.

By Mr. CALL:

Q. Mr. Sproule, you instanced the shipment of a car of oranges by Ruddock, Trench Company, where you had refused the routing directions of the shipper.

A. In protection of the—and protecting the through rate.

Q. On the theory that it was not a *bona fide* offer. Now, isn't it a fact that your company has in numerous instances refused other requests of shippers to route which were similar to the Ruddock Trench shipment, during the last year?

A. We always do.

Q. Yes.

A. So there was no discrimination against them.

Q. Then why do you distinguish that case from the numerous other cases in which you have made such refusals?

A. Because that case was notorious here, and we have received notice recently that suit has been brought against us in Sioux City on account of it. That is one that naturally would come to my memory. Apart from the fact that I think I read somewhere here of some mention that somebody had said there was a car held four days on the tracks, which was an additional reason for mentioning it.

Mr. FLINT: Mr. Nadal testified to that.

1588 Mr. DUNNE: That is correct.

By Mr. CALL:

Q. Now, I have an instance here of car F. G. E., number 14,546, shipped June 17th, 1903, from Colton, destined to Council Bluffs, where routing was requested by Southern Pacific and U. P. and the car was routed by your company by the Rock Island, the R. G. W. Do you have any recollection of that car?

A. Unless there was something special to call my attention to it, I would not know of it. That would be handled here in the ordinary routine of business. But I guess you will find dozens of such cases.

Q. I would find a great many such cases, would I not?

A. I don't know whether there were a great many or not.

Q. If I should refer to the numbers of the cars, could you——

A. This was a case which you cite which I take to be one of those in which they accepted our routing and the bill of lading.

Q. It is a case where it was routed otherwise.

A. Yes.

Q. It was routed contrary to the direction of the shipper.

A. Yes. It was not a routing that the shipper insisted on unless he could get protection of the published through rate and have the use of that route at the same time. Failing in that, he wished the route that we chose to give it, and hence the route that was given the car.

Q. I instance another case, F. G. E., 18,323, shipped from Colton, July 7th, 1903, and routing by the S. P. and Denver & Rio

1589 Grande requested, in which the car was routed Southern Pacific and U. P. Do you know anything about that case?

A. No, nor about the previous one, except in a general way.

Q. I have here a long list of cases of cars where shippers have requested certain routings and they have been routed contrary to such directions.

A. And the shippers accepted a bill of lading by the routes the cars were given by the initial carrier, which seems to dispose of the question.

Q. I refer to it as being not an unusual matter in the course of business to request routings and to have them refused. Is not that so?

A. Shippers from time to time indicate a desire to test the initial carrier's sincerity; and I don't think I have had any difficulty in discovering it.

Q. I understood that you said in substance that the reason for the application of the—or one reason for the application of the rule reserving to the initial carriers the right to route citrus fruit was because of the peculiar nature of citrus fruit, being different from other freight, and that it could not be carried in the same cars. Did I understand you right?

A. No sir, I didn't say that was the reason for reserving the right.

Q. What did you say about that, or what do you say now?

A. That it was by reason of the special car being required for this fruit that it became necessary for us to make contracts with

1590 private line cars—private car lines.

Q. Well, referring, now, to the contract in force between the Southern Pacific Company and the Armour car lines, which is in evidence in this case, in which the Armour car lines agree to furnish at least 5,000 cars—refrigerator cars—for the transportation of deciduous fruit—citrus fruit, apples, vegetables, salmon and meat, do I understand that you expect and require the Armour car lines to furnish special cars for citrus fruit that are not available for transporting these other commodities?

A. No. Those cars can transport deciduous fruit also and apples.

Q. Yes, and as a matter of fact they do transport all the articles mentioned in this contract?

A. Just what are the articles mentioned? There was one there that didn't strike me as sounding right.

Q. Deciduous fruit, citrus fruit, apples, vegetables, and salmon are referred to under article 1.

A. I thought you had "meats" in there.

Q. I thought that was referred to in another articles, but perhaps not.

A. No. That is correct.

Q. It does not include the shipment of meats?

A. No sir.

Q. Well, that being so, why should the routing rule be applied to citrus fruit any more than to deciduous fruit, apples, vegetables?

A. Because there is no such abuse in the deciduous fruit business.

1591 Q. But there is nothing, then, in the character of the commodity to prevent it, to prevent the application of the rule, or to require it?

A. Except that all deciduous fruit is moved under refrigeration and the car line makes its contract on deciduous fruit direct with the shipper; so that there is no incentive on the part of the car

line to go out and bid on that—get bids on that business, or any incentive on the part of the shipper to go out and work our connecting roads for commissions. At the beginning of the season, the shipper, we will say, of 150 car loads of deciduous fruit, wants to be sure that his fruit will move without fail under satisfactory refrigeration. It is so very perishable in its nature,—peaches, apricots, and such fruit. He makes the contract ahead. And thus the necessity or likelihood of manipulation is avoided.

Q. Well, are not these other articles that I have mentioned also perishable?

A. Apples?

Q. Deciduous fruit, apples, vegetables, fish?

A. Deciduous fruit. I have just spoken of. Apples are perishable. Apples are put into the freight—to begin with the apple business is not of sufficient volume to attract attention. It ranges from 800 to 1500 car loads in a year. And there has been no manipulation of that business.

By Mr. DUNNE:

Q. What do you mean by "manipulation"?

A. There has been no manipulation of the rate by any car line devices or by direct rebates to shippers or concessions given by the roads, directly or indirectly, that we know of at this time.

1592 We haven't felt the effect of it. There has been no—it has not been called to our attention, and if there had been any serious departure from the tariff we would know it.

By Mr. CALL:

Q. Then the reason for making and enforcing the routing rule does not relate so much to the character of the commodity as it does, as you term it, to the conditions existing?

A. Yes sir, the abnormal conditions.

Q. The giving of rebates as in citrus fruit.

A. And all the train of evils that followed upon it. The salmon referred to there, I don't think there are probably 50 car loads of salmon a year, but they require refrigeration. They are put up in tight barrels, by the way. But as they require refrigeration, we make a contract with the car line to take care of it; hence the reference to salmon there. The tonnage is insignificant, but as we were making a contract we wanted to take care of all the tonnage that was likely to come into it.

Q. Can you give any special reason why the routing rule is not enforced as to other commodities generally?

A. The routing rule is enforced whenever there is any need to enforce it; but it is enforced in another way, as I have already described in giving my testimony this afternoon. Our tariffs on east and west-bound business provide that these rates will apply over lines with which there are divisions. Now, if we find a line that is manipulating the rate illicitly and doing us damage——

Q. You mean cutting the rate?

1593 A. Cutting the rate, giving rebates, or creating demoralization in that way, why, we cancel the divisions with that line. That canceling of divisions puts them out of business, puts that line out of business; and we do it from time to time.

Q. So that they are no longer a party to the joint tariff.

Q. They are no longer a party to the joint tariff and cannot be recognized again until their divisions are restored. That is the way that we regulate the other business. And the fact that we can do that is a wholesome corrective of abuses that otherwise—is a wholesome preventative of abuses that otherwise might creep in.

Q. Well, tell me why you don't apply that method to the citrus fruit, instead of control-ing the routing directly as against the shipper?

A. Because if we did it we would have no line left to carry the fruit. The business—the demoralization had been so widespread and complete that it was universal. It had gone too far.

Mr. CALL: That is all.

Mr. DUNNE: That is all.

By Mr. NORTON:

Q. Mr. Sproule, there was the expression, "the right to divert," used a number of times by you and your counsel too. Do you have the idea that the matter of diversion is one of right?

A. No sir.

Q. On the part of the shipper?

A. That was one of those loose——

1594 By Mr. DUNNE:

Q. It was used simply in a literary and loose sense?

A. That was used loosely for convenience. But we don't recognize any right to divert, unless subject to the provision that—in cases of insolvency, that the rights of owners may be protected.

By Mr. NORTON:

Q. The diversions that you have been allowing since 1900 and before that have been by grace and as an accommodation to the shipper.

A. By grace, as you have described it. In fact, for a time——

Q. And by way of aid to the citrus traffic and promotion of it.

A. —we look to the time when we hope that the shippers will see their way to give it up altogether.

By Mr. CALL:

Q. But the matter of diversion is a usual and universal custom, is it not?

A. No sir; it is exceptional, and peculiar to the orange business.

Q. I am speaking of the orange business.

A. It has crept into the orange business.

By Mr. DUNNE:

Q. Since some reference has been made to the use of the term "right," it may have been used in your examination—used by you or by myself. But if we are to characterize the diversion with any degree of criticism, it is a privilege, is it not?

A. Yes sir. It is given by courtesy of the carrier.

Mr. DUNNE: That is all.

1595 It is stipulated between the parties that the time for taking testimony in this cause shall be extended to and including January 25th, 1904.

It is further agreed that the parties to this cause waive the signature- of the witnesses who have testified this day, to-wit, William A. Bissell, Edward Chambers, I. L. Hibbard, and William Sproule.

Whereupon the further taking of testimony in this cause was adjourned to be resumed upon two days' notice.

1596 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, Defendants. } No. 1039.

Testimony taken before Alton M. Cates, special examiner and commissioner, in the above entitled cause on February 3, 1904, at room 308 Currier building, Los Angeles, California, on behalf of the defendants, The Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Railroad Company, and The Southern California Railway Company.

Present: Joseph H. Call, special assistant United States attorney; Frank P. Flint, attorney for Southern Pacific Company, and T. J. Norton, attorney for the Atchison, Topeka & Santa Fe Railway Company, the Santa Fe Pacific Railroad Company and the Southern California Railway Company.

And thereupon the following proceedings were had:

1597 It is stipulated that the time for taking testimony in this cause, for both sides, is hereby extended to and including February 4, 1904.

Mr. FLINT: In accordance with a stipulation heretofore entered into by the parties to this cause, the defendants hereby offer in evidence the following extracts from testimony of witnesses called before the United States Interstate Commerce Commission in a case

entitled "Consolidated Forwarding Company, a corporation, complainant, *v.* The Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railway Company, and Southern California Railway Company, corporations, defendants," and also in the case entitled "The Southern California Fruit Exchange, a corporation, complainant, *v.* Southern California Railway Company, Santa Fe Pacific Railway Company, Atchison, Topeka and Santa Fe Railway Company, and Southern Pacific Company, corporations, defendants."

Testimony of William Sproule.

Pages 528 to 571, Inclusive.

Cross-examination.

By Mr. HERRIN:

Q. What amount of damage claims did you pay for the year November, 1901, to November, 1902?

A. $3265.00.

Q. Thirty-two thousand in the preceding year?

A. Yes.

Q. How did it happen that there was such a large excess in November, 1900, to November, 1901?

1598 A. That was the first year in which we really felt the operating difficulty of getting the fruit to market, and serious delays occurred by all lines. The Santa Fe had serious delays on their lines by reason of a coal strike, and they proceeded to pay the claims growing out of their delays, and although the delays by our line occurred upon the rails east of us for the most part, but we could not, in the face of the situation, wait for the eastern lines to pursue their usual route and pay the claims a year or a year and a half later; and we paid up and held our position in the traffic.

Q. Was there always, however, a basis of claim of liability under the payment of these claims?

A. There was no payment made except upon a satisfactory showing of loss, and in which we were convinced that the loss had actually occurred.

Q. The claims were made in good faith?

A. The claims were made in good faith.

Q. And were they made in any way to cover a rebate or some inducement you were offering to secure shipments over your line?

A. In no way.

Q. Had no element of that sort?

A. No sir. When our connections were paying rebates prior to January, 1900, we paid none. Consequently it is not likely we would do it after January, 1900, when we controlled the routing.

Q. But some of these claims, you say, were for damages resulting

on connecting lines, and you paid the claim and then you collecte
from your connecting line?

1599 A. Yes sir.

Q. You might work a rebate out that way and not pay
yourself. What I want to get at is the absolute facts as to whethe
any of these claims have any reference to a rebate or consideratio
or inducement of any sort to secure the routing of freight?

A. If they were in the nature of a rebate we would not have pai
them. The claims were made for specific shipments showing th
time of shipment, the road they asked, the time of arrival at des
tination, the delay in transit, the loss accruing from the sales of thi
fruit, and the fact that it was established so that we could not ge
away from it; that it was the delay in transit that caused this loss

Q. It was solely on account of the delay in transit of shipments
that had been made that you paid those claims?

A. Yes sir.

Q. And no other consideration?

A. And no other consideration. I might observe that we generally
paid a comparatively small percentage of the claim as rendered
making the best settlement that we could.

Q. But you didn't turn the shippers over, when you had routed
the shipments and say, "You must go to connecting lines to collect
the claims." You undertook that yourself?

A. We undertook that ourselves. The fact of the matter is, i
we were to turn them over to connecting lines for collection, that is
claims after we had ourselves routed the freight and designated the
route which the freight should go, they would avoid a road which
gave a service over three or four lines when they could ship

1600 by one road, and by that company they would not be referred
to some other; and the competitive condition forces our hand
in a case of that sort.

Q. How much have you paid, if anything, this season since No-
vember last?

A. Nothing.

Q. Did you have anything to do with fixing the original rate of
$1.25 a hundred on citrus fruit?

A. No, I did not.

Q. Do you know anything about the consideration or basis that
fixed the rate?

A. Except in the most general way.

Q. What I want to get at is whether it was made a low rate from
the carriers' standpoint in order to foster the industry of orange
growing?

A. The business at that time, as I remember it, was handled in
ventilated cars altogether.

Q. The business was small at first, wasn't it?

A. Yes, and the rate was made so low, especially to the Atlantic
seaboard to meet the importation of the Mediterranean orange
against which at that time there was either no duty or an insuffi-

cient duty. I think there was a small duty. Those oranges came west some distance and controlled the markets at the different interior points. Then at that time the California orange production was not sufficient to hold the market, and the orange situation then was pretty much as the lemon situation is now; there being an insufficient supply of the domestic orange, the Mediterranean orange came in and took the market and a fight for the control of the market ensued.

1601 Q. When the rate was first fixed the business was small.

A. Yes, the rate was fixed for the purpose of developing this orange industry and was fixed with a view to developing it as against what was then quite an important industry, that is, the Florida industry. In fact, California did not raise sufficient oranges to supply the market.

Q. You may give in your own way an answer to this suggestion: If you made the rate to foster the industry when it was comparatively small, now when it appears that it has grown up to a large business approximating 20,000 cars per year, how is it that you maintain that rate instead of reducing it, upon the presumption that the rate now is one of considerable more profit to you than it was when it was first put in force, and that you can afford, therefore, to make a reduction, because of the large volume of business offered?

Mr. CALL: Mr. Commissioner, I think it would be proper to note that there was no examination in chief on this line, and this testimony is your own testimony.

Mr. HERRIN: That is true, yes.

The COMMISSIONER: I should examine him on that line any way.

Mr. HERRIN: I was going to say if you don't want to hear from Mr. Sproule now I would put him on at some other time. You have my question. Please answer it.

A. Well, when the rate was put in it was put in as various of these California rates on native products have been put in, for the purpose of developing the traffic. It was put in at a time when the conditions governing the traffic were very severe, both by

1602 reason, as I have already stated, of the crop being small—at that time it was supposed it would have to compete, as the early crop in part does compete, with the Florida orange, and had at all times to compete with the Mediterranean orange, which was such a factor in the market as made the marketing of the California orange in the Eastern States, particularly at the Atlantic seaboard, quite a serious question. We handled the crop in what was known as a fruit car, which was a box car 28 feet long lined on the inside, with ventilators in the ends; and as compared with the existing car, it was a very light car. The box cars in the general railroad service at that time were of the same length, and this car could be used interchangeably for all kinds of merchandise and for perishables. Now, as the business has grown, the demands of the shippers

have grown, just as their interest in the industry itself in other details has grown, and they have been adopting improved methods.

They call upon the carriers to adopt improved equipment, and when the necessity came for furnishing a refrigerator car to meet the wishes of the shippers, we furnished a 30 foot and a 34 foot refrigerator. Then it came to the 36 foot, and now we have got a 40 foot car in, that weighs 35,000 pounds approximately.

By the COMMISSIONER:

Q. What was your first minimum?

A. Our first minimum was 20,000, as I recollect it.

Q. There was some mention made here of a minimum of 18,000 pounds. Do you remember that?

A. No, if there was, that was before my time. I don't think there was a minimum of 18,000 pounds. Then came the necessity for
1603 icing, which entailed an additional expense, and an additional weight for the carrier to haul. Further than that, owing to the magnitude of the tonnage and the season at which it moves, it is impossible to get return loads for that equipment as we formerly did, for the cars which were originally in use. In answer to an inquiry recently made of our management since I have been here at Los Angeles at this hearing, our manager informs me that for the twelve months ending February 28th, 1903, that of the refrigerator cars coming to California for fruit shipments, but 22 per cent. came with loads over the Southern Pacific rails.

By Mr. HERRIN:

Q. During what time?

A. During the twelve months ending February 28th, 1903.

By the COMMISSIONER:

Q. You don't load back as many as the Santa Fe load back?

A. No, sir, we don't. That represents a period at which we had been using our utmost endeavors to get loads, for the reason that it was very difficult to get empties returned, owing to a stress of the ordinary commercial traffic. They would sidetrack the empties, and move the loads in preference. Consequently we tried to get a load and move them promptly, consequently the equipment was short; and even under those conditions, we could load but 22 per cent. back. So, I was very much astonished when I heard Mr. Chambers' figure, and I was likewise agreeably surprised when I found we had loaded even 22 per cent., but that arises from the fact that the Santa Fe have their own rails from here to Chicago. They can find loads right there in that neighborhood.

By Mr. HERRIN:

Q. In Illinois?

1604 A. Yes sir; and the whole stress of their organization is put on finding return loads for those cars. We have to rely

upon our own commercial agents in the East to induce our connections to set cars for these loads, and if it is inconvenient to haul a refrigerator to the point of loading they won't do it. But further than that is the fact that if they do it, by the time these cars get scattered among our different connections and they set them at different points, the delay is so great to the car that we will run out of cars at this end, because if we do not have a continuous stream of cars coming West to correspond with the stream of loads going East, we will run out, and shippers want to get cars when they call for them. The problem of the empty return is a growing one and a serious one, and especially under conditions of commercial activity such as now prevail. The result of all that is that for every car that we haul East, we have to bring back—for every hundred cars we haul East loaded, we have to bring back 78 cars empty; and during the recess I made a figure on that, by way of illustration. Take the ordinary C. F. X. 36-foot car. It weighs 34,000 pounds. Now, if it moves under ventilation there is necessarily no weight of ice to be allowed for; there is just the 34,000 pounds. Now, out of every hundred cars, 78 return empty; so I figure 78 per cent. of 34,000 pounds returning is 26,500 pounds, making a total non-paying weight of 60,500 pounds.

By Mr. HERRIN:

Q. For every load every trip?

A. Each trip. The paying load is 26,000 pounds, making the total weight of the haul in that car, including the car, 86,500 pounds.

On that car we get an earning on 26,000 pounds at $1.25 a
1605 hundred pounds, or $325.00, which for the gross weight hauled is 38 7/10 cents per hundred pounds. Now, if that same car was under ice, there would be the additional weight of the ice, and those cars hold 10,000 pounds, so that instead of 86,500 pounds, we would have 96,500 pounds gross weight or an earning of 33 7/10 cents a hundred. Take the forty-foot car, which we have lately been called on to provide. In fact our contract provides that the Armour car line shall furnish us not less than 80 per cent. of 40-foot cars; and we would have made it a hundred per cent. but for the fact that we could not get all the cars 40 feet; they were not to be had; so we made the requirement the maximum, which was practicable. That car weighs 35,000 pounds, the F. G. E., the 40-foot car; it takes from nine thousand to ten thousand pounds of ice—we will say nine thousand for this purpose. Now, take 78 per cent. of the weight returning, that amounts to 27,300 pounds, making a total of non-paying dead weight load of 71,300 pounds. Into that car we put 26,000 pounds of load making a total of 97,300 pounds, on which we earn $325.00, or 33 4/10 cents per hundred pounds on the gross weight. That is an illustration of the difference between the hauling of the oranges at $1.25 in a ventilated 28-foot car as formerly in use, and loading them in the 40-foot car which the shippers now demand.

By Mr. HERRIN:

Q. And the original car could be and was generally loaded back.
A. Loaded back. It was available for all sorts of freight.
Q. And the dead weight was much less.
A. I think it was about 20,000 pounds.

By the COMMISSIONER:

Q. How long since refrigerator cars have been used?
1606 A. I think, sir, since about 1890, or something like that.
Q. Mr. Chambers said he thought about 1889.
A. 1889 or '90.
Q. And this rate of $1.25 has been in effect how long?
A. It has been in effect all that time.
Q. Was it in effect before that?
A. I think it has been in effect since—yes, I think it was in effect for three or four years before that.

Mr. HERRIN: Are those all the suggestions you have to make, the comparison of the present service with the service when the $1.25 rate was first established?

A. When the service was first established we had no preferred service. The preferred service then was not equal to our ordinary service now. We got the time down to deliver in Chicago in the eighth day, New York on the twelfth day, until the condition of the traffic of the country became so congested that we could not get it moved at that time. There has been as much effort used to get the traffic moved in the time of the last two years, as there was in the time of the preceding—in the preceding period when the time was shorter, but the fact of it is the roads did not have the power to move the stuff. The business of the country has increased, I think it is a matter of common knowledge, to a point where the locomotive shops of the country are not able to turn out the equipment. We cannot get locomotives for love or money.

Q. In addition to the service rendered when you originally made the rate, you have expedited the service?
A. Decidedly so.

Q. And the only reason why you don't accomplish it now
1607 is because of adverse conditions which are temporary, I suppose.

A. If the Southern Pacific could get all of the locomotives that is has ordered, and the orders for which have been outstanding now for one to two years, our management tell me there would not be a delay on our line; and connecting lines are in the same fix. When roads like the Michigan Central and the Pennsylvania cannot move the traffic incidental to their own lines, it is not likely they can move with the former dispatch, the freight that comes from the western verge of this continent. It is so remote to them that it is only a mere fragment of their business. As a matter of fact, we have instructions with our Chicago agent, Mr. Neimeyer, who at-

tends to the diversion of citrus fruits, that in all these diversions he shall be watchful and divert to points east of Chicago, or for that matter, points east of the Missouri river, by lines that can give the service, because a line that will give notice today that it can move the freight, tomorrow will be blocked up.

Q. This custom of diversion orders has grown up in recent years. How long has that been a practice?

A. It began when the shippers formed their organizations here for the purpose of consigning fruit to their own agencies in the East. That is several years ago. And it has grown until now there is practically a diversion of every car.

Q. Is that an element which has grown up in recent years?

A. It is an element of delay to the service, and it has grown up within comparatively few years.

Q. Is it of value to the shipper?

A. It must be of value to them or they would not use it.
1608 It is of value to them in the way they are doing their business.

Q. That service you furnish?

A. That service we furnish and it is so urgent in its nature that we cannot use our own wires for it.

Q. What I am getting at is, that is something you have added to the service since you made the $1.25 rate, and is a reason why the rate should be maintained, if not increased, because originally you didn't do anything of that kind; you didn't divert the shipment?

A. No.

Q. In a general way, you may state what that service consists of, and how expensive it is to the companies—to the carriers.

A. When a car of fruit starts from southern California for Chicago or Omaha, it is quite improbable that it will reach that destination. The chances are that it will be diverted in transit. A car starting for Omaha may be sent up to Winnipeg, Manitoba, or New Orleans, or Jacksonville, Florida, or Philadelphia. The shipper here goes to our representative and tells him that he wants that car diverted. We have to develop where that car is, and have to instruct the office of the railroad upon which it is situated, on which it is moving at the time, that the car is not going to its original destination but some other. They then give the necessary order, communicate with us; all the records have to be changed. The chances are that car has to be set out of the train it is running in, which means delay to the whole train; and in like manner shippers go to our representative in Chicago or at other points and notify them
1609 that this car is not to go to its original destination, but be diverted to some other. The consequence is that for every diversion there are half a dozen telegrams, sometimes a dozen, to be exchanged, and so far this season out of four thousand and odd cars which have moved, out of 4685 cars which have been shipped, there have been 4344 diversions, which is almost a diversion for every car. Now, to make those 4344 diversions, there were

approximately—there was a minimum of twelve thousand messages sent over the wires. Those messages we have to use the Western Union wires for.

Q. And pay for them?

A. Pay for them. That is, if we don't pay in coin, we pay in kind.

By Mr. CALL:

Q. You have a contract about that, haven't you?

A. Yes, we have a contract up to a certain amount for which we return service and give them transportation. In other words, they take it out in trade. Beyond that we have to pay coin.

Q. They do your business under a joint arrangement, the Western Union. I saw a contract once between the Western Union and the Southern Pacific railroad, showing there was nothing paid on that score by the railroad.

A. That must be a very old contract. There is no such thing now. Under existing contracts, we give them services rendered up to a certain limit. Beyond that we have got to pay the coin, so that our telegraph department is after us from time to time cautioning us to keep down some of our messages.

By Mr. HERRIN:

Q. Now, have you anything else concerning the reasons why this rate has not been reduced?

A. The rate has not been reduced because believing the rate in itself to be a very low one, service considered, we have not
1610 believed that the necessity existed for reducing the rate.

Q. From the growers' standpoint?

A. From the growers' standpoint we have not been able to perceive that there is a necessity for reducing the rate. We treat these rates each by itself, first examining the question of whether it is reasonable. Our interest is to develop this industry, it has developed and is developing, and at this date there are in citrus fruits in southern California, as we figure it, about 88,000 acres, which is about all that this territory will permit, owing to the supply of water. Of that there is about 27,000 acres that is tributary to our rails and 27,000 acres tributary to the Santa Fe rails, the remaining 34,000 acres being served by both jointly. That has developed under the present rate. If the conditions should show that the industry would decline and that there was an economic necessity for reduction in the rate, the carriers are always open to a discussion on that subject, just as in the case of lemons.

Q. I want to take that up later. As I understand you, the orange production has developed as far as practicable within the limits of the water supply?

A. Yes.

Q. But the limited water supply is the contracting force on the industry, and not any rate of transportation.

A. That is right.

The COMMISSIONER: What did you say about a limited market?

Mr. HERRIN: Is the market becoming more limited in the East?

The COMMISSIONER: Suppose the water supply was sufficient, is there a sufficient market in the East to develop the industry beyond what it is at present?

1611

A. I think the market in the East is expanding. It is expanding greatly by reason of population, but more by reason of the prosperous conditions, by which the whole people are in a position to buy and do buy. Another factor which has helped the California orange industry is that Florida has not been as important a factor as she was, and the Mediterranean industry is largely if not wholly excluded by the present duty of a cent a pound.

Q. How do you account for the fact that in 1900–1901, almost a third more oranges were shipped than this year?

A. That is an industrial situation. The prices that were realized at the latter end of last season were very satisfactory. This year the growers have speculated upon that and have not been willing to let their oranges go. They have been holding them, expecting the prices at the close of the season, that they could not get earlier.

By Mr. HERRIN:

Q. The season has been late, too?

A. The season has been nearly a month late.

By the COMMISSIONER:

Q. The testimony is that the oranges have been sold at less cost because they have not been in good condition?

A. Because they have not been in good condition. We have had in California the coldest season in fifteen years. The first oranges sent this year were deplorably bad. Their being sent forward was deplored by the most intelligent growers in California.

By Mr. HERRIN:

1612

Q. Now, have you any other considerations to offer upon the rate itself, before I go to a comparison of the rate with other rates in order to determine the reasonableness?

A. I think that is all I can say upon that subject.

Q. Now, if we compare this rate with other rates, as similar as you can obtain, I would like to have that and see what deduction you can make from it as to the reasonableness of the orange rate itself. Give us what you have in the way of comparison.

A. I drew off a memorandum here of the Southern Pacific standard 36-foot box car, that being the length which the American Railway Association has decided upon as the advantageous length for a box car. I have taken the heaviest box car we have, which weighs 29,500 pounds.

By the COMMISSIONER:

Q. How long is that car?

A. 36 feet, sir, 29,500 pounds.

Q. What is the capacity?

A. The capacity is 60,000 pounds. On beans which are shipped very largely from California, our rate is 75 cents a hundred, which load is 30,000 pounds minimum, making a gross weight of 59,500 pounds, *on which we earn $225.00* paying us 37 9/10 cents a hundred pounds on the gross weight.

Q. Are you taking into consideration the back loading of these cars or simply shipment one way?

A. These are box cars, and load both ways. We expect to get loads and do. Canned goods take a rate of 75 cents a hundred and the minimum weight is 30,000 pounds. The dead weight of the car likewise is 29,500 pounds, making a total dead weight of 59,500 pounds on which we earn *$225.00* or *37 9/10* cents.

1613 Now, some reference was made this morning to the landing of a train load of citrus fruit, and as to that if I may be permitted, I would give the following as an illustration of the difference between citrus fruit and canned goods, the last named commodity. Citurs fruit loaded in a 40-foot car, weighing 35,000 pounds, we load 26,000 pounds of oranges, and there would be from 9000 to 10,000 pounds of ice. That makes a total weight of 70,500 pounds. In that train put 28 carloads of oranges.

Q. Is that about what you haul?

A. Yes, I am figuring on a thousand tons gross, or as near as I can get to it. The 28 cars would be 987 tons gross, which at $325.00 per car, would pay us $9,100.00, or $9.20 per ton of 2,000 pounds. Now, in the canned goods season, and in California products of that character generally, we don't send a car forward loaded with its minimum. We load the minimum in each end of the car, so that in the case of canned goods, A's shipment will be in one end of the car and B's in the other end of the car, so that that car will have not 30,000 pounds of canned goods in it, but 60,000 pounds. We do that so as to preserve the equilibrium between east and west bound loading, and because the canned goods carry just as well. So that in a box car weighing 28,000 pounds, we put 60,000 pounds of canned goods, making a dead weight per car of 88,000 pounds.

Mr. HERRIN: Total weight, you mean?

A. The total dead weight, yes sir; the gross weight per car. 23 carloads would be 1012 tons gross, and would pay us a revenue for that double load of $450.00 a car of $10,350.00, which is the equivalent of $10.20 a ton. Now, that comes nearer to being a comparison of the train haul than a simple average would be.

1614 By the COMMISSIONER:

Q. Stop there, Mr. Sproule. Going back ten years when this rate was put in, while your orange minimum may be about the same,

your carload of canned goods would not have weighed but 30,000 pounds, paying you, would it?

A. That is right, sir.

Q. You didn't have 60,000 pound cars in those days?

A. No sir.

Q. And your locomotive would not have hauled more than 23 of those cars?

A. At that time, no sir.

Q. That is to say, one train crew and one locomotive would have carried 23 cars of 30,000 pounds then as against 23 cars of 60,000 pounds now. So that the great advantage which you show in favor of canned goods is due to the improved methods of operation with respect to the handling of canned goods?

A. Yes sir.

Q. Well now, if the relation between canned goods and oranges was fair ten years ago, and you carry canned goods cheaper to-day, is that any reason why you should not carry oranges cheaper, too?

A. You see in the matter of oranges the expense has gone into the equipment. We furnish a car that is double the weight of the car we furnished then.

Q. That is to say, while you can carry canned goods cheaper to-day than you could then, you cannot carry oranges cheaper than you could then?

A. On the contrary, the kind of equipment we have to furnish now, as compared with what we furnished originally, the expense of transporting oranges has greatly increased relatively,
1615 while the expense of transporting canned goods has declined relatively.

By Mr. HERRIN:

Q. You heard Mr. Chambers say he thought they made less money out of the orange business than they did in the early years, because of the increased expense. Did you hear that?

A. Yes.

Q. Do you agree with him?

A. I think that is true. Shall I proceed with this comparison?

Mr. HERRIN: Yes.

The COMMISSIONER: Go on, Mr. Sproule.

A. Dried fruit. The rate on dried fruit is $1.00 per hundred pounds boxed; $1.20 per hundred pounds in sacks. Perhaps I needn't go through that same calculation, but just give you the result, because the calculation is the same as in the 36-foot car. I have purposely taken the heaviest box car; I can pick out lighter ones. Gross weight 59,500 pounds, on which *we earn $300.00*, or the equivalent of 50 4/10 cents per hundred pounds. If shipped in sacks, we have earned on the *same car $360.00*.

Mr. CALL: You mean as gross earnings?

A. Yes sir, which is the equivalent of *60½ cents* on the gross weight of 59,500 pounds. Even on nuts, which are a light commodity

walnuts and almonds, we earn $1.20 per hundred pounds, which on a gross weight of 49,500 pounds pays us *52½ cents per* hundred pounds. If we turn to westbound business, we find by a similar calculation that on agricultural implements paying $1.25 per
1616 hundred pounds, we earn on the gross weight *56 cents* per hundred pounds. On glass bottles and jars, paying us *85 cents* per hundred pounds, we earn on the gross weight 38 2/10 cents. On canned goods paying 90 cents a hundred pounds, 40 4/10 cents. On hardwood lumber, oak and similar hard wood lumber, paying us 75 cents per hundred pounds, we earn on the gross weight 37 9/10 cents per hundred pounds.

By Mr. HERRIN:

Q. As against what on oranges?

A. As against 33 7/10.

Mr. CALL: Excuse me. I don't quite understand that, Mr. Sproule. I suppose that the court does.

The COMMISSIONER: Yes. He takes the weight of the paying freight and the weight of the car and adds the two together and divides the total amount received for freight by the total weight of the car.

Mr. CALL: You figure in the dead weight on the second calculation?

A. Yes, because that is what the engine has to pull.

Mr. CALL: I understand it perfectly now.

A. On machinery paying us $1.25 per hundred pounds, our earning on the gross weight is 56 cents per hundred pounds. On paper paying us 75 cents per hundred pounds, our earning on the gross weight is 33 7/10 cents per hundred pounds. On soap paying us 75 cents per hundred pounds, our earning on the gross weight is likewise 33 7/10 cents. On staves and heading, paying us 75 cents per hundred pounds, our earning on the gross weight is 37 9/10 cents per hundred pounds. On structural iron, paying us 75 cents per hundred pounds, it is 37 9/10 cents per hundred pounds. I may observe with reference to that item dried fruit which pays
50 4/10 cents per hundred pounds when in boxes, and 60½
1617 cents when in sacks, that includes the various forms of dried fruit, apricots, peaches, prunes and raisins and the tonnage that was hauled over our roads last year.

The COMMISSIONER: I have just received a communication from somebody presenting a claim that you exact an unreasonable rate on dried fruit.

A. Well, these figuers stand, notwithstanding. The tonnage is very large.

By Mr. HERRIN:

Q. If you have to reduce any rates you ought to reduce some of these other rates, rather than oranges?

A. That might be, too, but on the other hand the green fruit men

seem to think it ought to be on green fruit because if he dries it we get transportation on one ton instead of seven. We have to deal with the commodity as we find it.

Q. Comparatively, then, the orange rate is the lowest rate you have?

A. It yields us less compensation than any of these commodities I have just named.

Q. Now, in the commodities you have named, you use the ordinary car and send it through without expedited service, whereas, in orange shipments it has been described that they are given special service and in case of storms and all that, don't you roundhouse the fruit at times and give it special service over and beyond what we have talked about?

A. It has to be put in roundhouses in severe weather and very frequently on arrival at destination it has to go into the roundhouse then. Consignees won't touch it because if they open it it will freeze.

Q. That service is peculiar to the orange and lemon?

A. Yes, and not to any other commodities I have named.

1618 None of them are perishable, and the westbound rates I have named are below the normal, because they are rates in which we have to meet competition as we find it, owing to competition by water.

Q. The service you render in carrying lemons is about the same as that in carrying oranges?

A. Practically the same.

Q. Is there any difference in the cost to you?

A. It is about the same thing. In fact, when there is a car in the train, we don't consider whether it is oranges or lemons.

Q. You have given an emergency rate on lemons, and you have not on oranges. Give us the reason why that was done.

A. That rate was under consideration for a long period. When it was put into effect it was after a full investigation of the facts, and I myself made a trip to southern California for that purpose, and the situation developed to be that there is a considerable production of lemons in California in the winter months, during December, January, February, March and April. Those are the cold months when the lemons do not readily find a market at satisfactory prices. The experiment of several years had shown that they could not market the lemons during those months, except to a very limited extent. They had to be a very high grade of lemons, and to be very carefully sorted, so as to send nothing but the high grade. We found that in order to save their crop, the growers were curing the lemons and holding them over with the result that when the spring warmth came and the market opened up in the East, they had sacrificed probably 60 per cent. of their crop, that is, in

1619 trying to keep it. The early fresh lemons would decay and had to be thrown away, so that about 60 per cent of their crop was going to waste. We found that although they petitioned for a

rate of 75 cents per hundred pounds that on consulting the leading shippers here and figuring the thing out carefully, that if they could get a rate of $1.00 per hundred pounds, that the difference between the $1.25 and the $1.00 would yield them a difference between a profit and a loss in shipping . the prices they had to meet during these cold months, and so we made the dollar rate. In that way we doubled our tonnage—more than doubled our tonnage, and at the same time we benefitted the grower. He has able to find a market for his lemons as they matured on the tree, and during months when otherwise he had no market. That 25 cents per hundred pounds was a difference of 20 cents a box. That difference of 20 cents a box was a difference between profit and loss to that grower, and the sequel has shown it was a wise thing to do. The lemon business is different from the orange business in one essential point. The lemon business is today where the orange business was when this $1.25 rate was made. The California supply is altogether inadequate to the demand. They produce in California a thousand carloads of lemons, where the market will take ten, and the consequence is that the Mediterranean lemon comes in and takes that whole eastern market. Last year the Mediterranean lemon cam.e in and swamped the market, so that it was current comment in all the papers in the United States that lemons were selling in New York and Baltimore at a cent a box—anything—they were throwing them away.

By Mr. CALL:

Q. The tariff was a cent a pound?

A. Yes. They were throwing them away. They were
1620 selling at anything; and it was owing to that fact that the lemons came as far west as Denver. They generally come west to the Missouri river. The Mediterranean lemon grower and shipper, having got bit last year, is not sending his lemons over this year, but is feeling the market, and the price is consequently being kept up and the California lemon grower by reason of the Mediterranean lemon being held back and not coming in, is getting a handsome market.

By the COMMISSIONER:

Q. Taking the condition of the market, and everything that bears on the question, do you say a rate of a dollar this last winter has been a reasonable rate?

A. I think that the dollar rate has been a reasonable rate.

Q. Reasonable to you and reasonable to the grower?

A. Of course, if the grower had been aware of the attitude of the Mediterranean grower, he probably would not have been as solicitous of a reduced rate on lemons as he was; but he was confronted by disastrous conditions in the immediate present, and could not for-see what was in the immediate future. Neither could we, although we did suggest that, judging by the swing of the pendulum

in all these matters, that the fact that the Mediterranean lemon grower got pounded to death last year, would cause him to be shy of the American market this year. That has been so, but I think helping the California lemon grower into those markets has been beneficial all around. We made more money out of the dollar rate than we would have made out of the dollar and twenty-five cent rate.

By the COMMISSIONER:

Q. This act to regulate commerce requires rates to be reasonable. Suppose the lemon grower had come to the Interstate Com-
1621 merce Commission and made just the case they made to you, could we have said that you ought to make a rate of a dollar, and that any rate higher than a dollar would be unreasonable? In other words, has a dollar under all the circumstances been a reasonable rate from their standpoint and your standpoint?

A. The rate only applies from the period from December 1st to April 30th.

Q. I understand that.

A. And while the rate is a lower one than is desirable, it is made to meet the special conditions as we find them. We deemed it a necessary rate, and as between the grower and the carrier, all conditions considered, during that period, a reasonable rate.

Q. Suppose we were of the opinion that the orange industry in California needed a better rate than it has today in order to properly thrive; would it be a reasonable thing for us to order you to put in that rate? You don't think that is necessary if we come to the conclusion it is; you say that is a ground on which we might hold that the present rate is unreasonable and a lower rate should be put in.

Mr. HERRIN: Let me suggest to the commissioner—I think I have suggested it myself before—that the carrier may voluntarily do what the commission orders it to do.

The COMMISSIONER: That is my view of it.

A. My answer to that would be, that I would not consider the dollar rate a reasonable rate after May 1st, because there is not the necessity for it, neither on the part of the grower nor on the part of the carrier, and the necessity does not exist.

The COMMISSIONER: The commission sits to determine
1622 whether the orange rate is reasonable or unreasonable. By what test should *be* be guided? Is it the cost of the service? Is it a comparison between that rate and other rates? You recognize the fact that this orange industry cannot exist in California without a favorable rate. The orange is the product of the soil. It has got to be marketed in the East; it has got to be taken there at a lower rate, which probably does not pay you for the actual outlay in comparison with the most of your through rates. Can those things be taken into account by the commission, or must we sit down

and figure out, as you can, that the orange rate pays the railroads so much money and therefore it cannot be made much lower?

Mr. HERRIN: I think that is a question of law.

The COMMISSIONER: I think that is a question of fact for the witness.

A. I don't know how I can answer that. I might also add that these lemons are carried without refrigeration.

The COMMISSIONER: We have recently held, and I suppose the case has been published now, that a rate of 17½ cents on grain from Chicago to New York was better than a rate of 45 cents on dressed meat.

Mr. HERRIN: A more profitable rate to the carrier?

The COMMISSIONER: A more profitable rate to the carrier. The rate on dressed meat from Chicago to New York is 45 cents a hundred pounds, a thousand miles or a little less than a thousand miles, and that is carried under very much the same conditions that these oranges are carried, except that that is not a product of the soil. It is in the nature of a manufactured product. Dressed meat
1623 is carried from Kansas City up to Chicago, 450 miles, and the rate today is 18½ cents, but the current rate had been 23½ cents. The minimum is about the same as oranges, and the conditions of transportation are about the same except it is a more concentrated product. So we recognize the force of what you have been saying about this kind of traffic, which requires a heavy car and the return of the car and all that.

A. It is particularly trying on the California roads, because we are on the western verge of the continent, and we have to deal with all the intermediate lines.

The COMMISSIONER: Here is another element, that this orange industry cannot develop unless it develops under a low rate. About how long will it be before these people may hope for some reduction? Don't you think you can carry oranges cheaper in proportion today, than you could ten years ago? You have a better road, better locomotives, cheaper fuel, and the mileage on cars is less, isn't it?

A. Yes.

Q. You pay more for your labor, but don't you think you can get the oranges to market cheaper than you could then?

A. I very much doubt it. I am not competent to pass upon the question of cost.

Q. How much does it actually cost to transport a train of oranges—the actual cost—from Los Angeles to El Paso?

A. I don't know.

Mr. HERRIN: We will submit testimony on that.

The COMMISSIONER: When you do that, you will see the cost of the movement is not anything like the amount you receive for it.

A. Undoubtedly it is not.

1624 Q. What is your division up to El Paso on traffic intended for Chicago?

A. We get 49 per cent. of the west of the Missouri River proportion. We get 49 per cent. of 85 per cent.

Q. Transporting that train of 28 cars of oranges from here to El Paso, you would receive, roughly speaking, $4500.00. Now, it probably would not cost you $500.00 to actually move that.

A. That is hardly a correct statement of it, I think, Judge. Of all the oranges that we move 62 7/10 per cent. *to* to points east of Chicago.

Q. After you figure it out on any basis, the mere cost of moving is insignificant in comparison with the freight money you receive, and as the density of your traffic increases, your profit increases. If you can transport six trains of oranges, you can afford to transport them cheaper than if you transported a single train—if you transport six trains a day.

A. If our facilities keep pace with our tonnage, we should be.

Q. Now, as this industry increases, and as your traffic increases in consequence of that, ought not the shipper to get some benefits from it? May he hope at any time to get any benefits from it?

A. Well, upon that theory, I should say that no road should put in a low rate for any industry to help it develop.

Q. It would be unfair to take your rate which was a low one at first, and make it a standard.

A. That has been the history of all these lines of development. The object of the road was the development of the industry,
1625 and to develop it they had to make it low. They could not wait and make it low ten years hence, because there would be no tonnage to begin with, and they make it low.

Q. How much has your stock increased in value in the last seven years?

A. I don't know sir. I don't own any of it.

Q. You know in a general way what stock was worth six or seven years ago, don't you? What was it, Mr. Herrin?

A. Ten years ago, during the panic, it wasn't worth more than eight or nine dollars a share, but that was so with most other stock.

Mr. CALL: Worth eighteen cents at that time.

Mr. HERRIN: It is selling today for $55.00, fifty-five or fifty-six, or fifty-seven or fifty-eight or sixty.

The COMMISSIONER: The testimony shows that the value of these orange orchards in the last seven years has not increased; on the other hand, I take it if you go back to seven years before that it would turn out that the orange orchards had increased in value faster than the railroad has.

Mr. HERRIN: We may reach a time when the railroad stocks are low.

The WITNESS: I am afraid we would have a hard time fixing our rates by the fluctuations of the stock market.

Mr. HERRIN: As soon as the business begins to fall off, the stocks will go down more rapidly.

The COMMISSIONER: Proceed, Mr. Herrin.

By Mr. HERRIN:

Q. If you were to take as a standard in making the rates, the western division of all sorts of traffic between its division of expense and the cost of operation, and what should return a
1626 reasonable revenue for the service rendered, you would have a different tariff than that in force, wouldn't you?

A. Yes sir.

Q. You cannot take that basis, can you?

A. No sir.

Q. If you regard the basis of the return to the carrier as the sole test—you make many rates much below that basis, don't you?

A. Yes. We have to base our rates largely on what it is possible to obtain, all the circumstances considered, surrounding that particular traffic.

Q. You aim to make rates that will encourage the movement of all sorts of traffic and give you as much revenue as you can get, provided you don't get them too high?

A. In this country where the number of products of the soil which can be shipped a long distance is limited, the development of the railroad properties depends upon the development of these industries.

Q. What have you got to say to the orange shipper who says you have made a dollar rate on lemons and don't render any more service to him than you do on oranges? What answer have you got to make to him, or did you consider that when you made the rate?

A. Yes sir; we asked that particular question. The answer was that there was no similarity in conditions between the two; that one is a case where the product goes to waste; it is not shipped; it is one in which the carrier gets less for the tonnage, and which, if the produce goes to waste, the grower loses all possible profits; and it
1627 was a combination of efforts to further the industry to develop tonnage for ourselves, and to meet a controlling condition and no other.

Q. Did you talk to orange growers on the subject?

A. The most important whom I talked to was Mr. Naftzger. He represents the shippers and ships about 40 per cent. of the total products of this State. He is probably as well informed as anybody in this State. This all goes to show that when there is an important factor arising in the business that the carriers do meet the situation to the best of their ability.

Q. You would do as well with the oranges as with the lemons if the necessity arose?

A. Precisely.

Q. If you had the same conditions surrounding the orange traffic, would you not do the same thing as with the lemons?

A. Yes sir. But the orange conditions are different. The oranges from one orchard are competing with the oranges from other orchards; so much so, that the shippers have attempted to form some

combination by which they can obviate that discouraging condition. One shipper will ship to a town in the middle West, another shipper will ship to the same town, and the fruit exchanges will ship to the same town at the same time. And it is slaughtered. I have known of three cars being shipped to a town that could not take more than one car.

Q. Is there any business in which there are not some failures?

A. There is no business in which there are not failures. If we were to base our rates upon the lack of success of people engaged in an industry, we would have no rates at all.

1628 Q. If you took into consideration the failures which always occur, and fixed your rates so as to help along the unsuccessful man, it would be absolutely impossible, wouldn't it?

A. It would. On the same theory we would reduce our rates on beans, on lands which is not adapted to raising beans, whereas the land that has raised beans and is adapted to it does make money.

Q. Some orange growers have not made money?

A. Some orange growers have not made money. They failed in every year to make money.

Q. Something was said about apple raising. I don't know whether you made any comparison of the apple rates of 75 cents per hundred pounds.

A. The apple rate is 75 cents.

Q. I asked you whether you made any comparison or not. Is that a lower rate than the orange rate, or a higher one?

A. The 75 rate is a lower rate. Apples load 30,000 pounds in the car.

Q. Considering the dead weight, you get less out of it?

A. They put in thirty, thirty-five and forty thousand pounds into the car. It is a fruit—well, it is almost as hardy as potatoes. It is shipped under ventilation altogether, moved in ordinary trains. They don't expect expedited service. It lays at destination—sometimes we have had on the lines at New York harbor—we have notified shippers after the apples had been lying on their tracks there for three weeks that if they did not take possession of their apples, that we would put them in warehouses at their expense.

1629 Q. Mr. Fletcher, of San Diego, testified he considered $1.25 as fair a rate for apples as $1.00 for oranges, and 75 cents for lemons.

A. That is the man that wanted the rates graded that way and shipped his lemons, but didn't ship his oranges.

Q. If he is correct in that and apples will stand $1.25, why have you made them 75 cents?

A. Apples will not stand $1.25. His particular apples perhaps would, but that was a condition with which the apple growers of northern and central California were confronted, the Watsonville section about which the witness spoke. The northern lines put in from eastern Oregon and Washington to eastern points, Chicago and west, a rate of 60 cents per hundred pounds on apples. They

raise a variety of apples up there which compete with the local production at consuming points. They put in that 60 cent rate at a time when our rate was a dollar. In northern and central California, several varieties of apples are raised which compete with those same apples. In addition to that, however, are also produced the character of apple that is produced in San Diego county, the Newtown pippin. In addition to that is the winesap, and the bellflower apple, and some others. We found that with a 60 cent rate in force from eastern Oregon and Washington that our apple growers in California could not compete. And there we have an industry which is developing; we want it to develop. This rate is said to be an emergency rate. I do not know what the emergency may be, but there is a condition that we are confronted with. It would stifle that apple industry there and would affect us. So we found, after giving the matter attention, and going the matter over with the growers, that a 75 cent rate would meet that condition by reason
1630 of the better quality of our apples; and a large quantity of them were varieties that could not stand a higher price. We cannot make a rate on Newtown pippins, and say we will charge $1.00 on Newtown pippins, but will only charge 75 cents on bellflowers, just as we cannot charge one rate on one variety of oranges, and another rate on another. That is the history of that 75 cent rate. There the grower was confronted by a condition where he wanted the railroads to come to his relief, and we found that that relief was needed, and we put the rate in. Those growers, besides, are working under difficulties. They shipped less apples this year than they did last year, because this year the oleaceous or some of those apple diseases have got into their tree. It was made to meet competition of other carriers.

Q. Did you have many apples moved under that rate?

A. Several hundred cars.

Q. Mostly from northern California?

A. From Watsonville and that section.

Q. Any from this section?

A. No, the apple section down here is at San Diego where our rails don't go. Our rails do not run south of Santa Ana.

By Mr. CALL:

Q. Suppose that oranges were raised up there in Washington and Oregon where these apples are, and there was competition, and a rate was made on oranges of 75 cents, would you meet that rate just the same as you do on apples?

A. Well, I suppose if it were a hypothetical shipment we might. We would do anything hypothetically, but they are not raising oranges up there and they never will raise any.

Q. If they did, the conditions would warrant reducing the rate to 65 or 70 cents, as you did in the case of competition with
1631 apples?

A. That would be a reason for the reduction, wouldn't it?

A. Competition of other carriers is one of the factors in making the rate. You can meet that competition or not, depending on the other conditions? It is only one factor.

1632 Q. You made the apple rate because of the competition up there, the raising of apples in Washington and Oregon?

A. We found it was vital to the apple industry.

Q. If it was vital to the orange industry you would do the same?

A. If it was vital to the orange industry we would do the same. We will not willingly or wilfully let any industry die upon our rails or let it be retarded or decline. We want it to prosper.

By Mr. HERRIN:

Q. The subject of competition between the Santa Fe and the Southern Pacific Company as to orange shipments, I will ask you if you solicit any orange shipments, or do your agents?

A. We do, that is, from time to time.

Q. You heard Mr. Chambers' testimony on the policy of his company and on the question of whether there was any agreement between you. What have you to say about that?

A. Well, from time to time I have to jack up our representatives in this territory and tell them to get in and take their share of the oranges, that they are not doing it, that we expect to get fifty per cent. of the business. We do that because fifty per cent. of the business is on our rails.

Q. You stated the reason of that is that fifty per cent. of the output is upon your rails, and you ought to carry that as against the Sante Fe the other half?

A. We would carry sixty per cent. if we could with safety.

Q. Do you have to solicit in order to get one-half?

A. We do if we are not watchful of it, the chances are we

1633 would get forty per cent. instead of fifty.

Q. Why?

A. If our men remained dormant while others were active, we would not get the business. The only way we can hold up to fifty per cent. of the business is to see that we get the business and distribute it to our rails; that the Santa Fe does not get away with it.

Q. Does the Santa Fe solicit also?

A. We have found them soliciting. It is not solicited upon a cut rate basis, however.

Q. I want to get at how you compete with them. You don't compete in the matter of rates, do you? Do you make any less rates than the Santa Fe?

A. No, we cannot.

Q. There is absolutely no competition in the rate?

A. When I say we cannot, I will explain that if we reduce the rate today, they will know it in five minutes, when it is filed in Washington, and will drop theirs.

Q. Well, do you make any less rate than the Santa Fe makes?

A. Our rates on oranges are generally the same. To competitive territory I think they are all the same. We intend to have them so.

Q. You don't make any effort to compete by reducing rates or giving less rates?

A. No.

Q. In what respects do you compete, if you compete otherwise?

A. We compete in the only way we can compete under a
1634 maintenance of rates that the law contemplates, and that is in service and facilities. It is because of that that we make these diversions, for example. We have to endeavor to meet their time and beat it if we can, although they have got the short line. We thought this year we had a shorter line, but after turning a considerable business to the Rock Island road, which is the short line, we found their water gave out, which embarrassed us, but our aim is to beat their time when we can. The only inducement we have to offer shippers is our service and facilities which we place at their disposal. Via our El Paso line we have facilities that offset the direct line of the Santa Fe. As a shipper observed this morning, he said he could not make certain shipments to certain points because he could not reach the Southern Pacific lines. Our rails via Ogden and El Paso reach everywhere, whereas the rails of our competitors do not reach as many distributing centers. If our oranges go out via El Paso they command Texas and the South by the direct lines. If they go out by Ogden, they command the whole territory north of the line of the Illinois Central and all the northeastern States and territory by direct lines. If the Santa Fe gets those oranges they will haul them over their long haul. That is what they aim to do. I would if I were in their place. Whereas, with our line diverting at El Paso and Ogden and there having use of every connection, can reach every gateway and divert through every gateway, and do it, and shippers know it, and designate to us the gateways through which they would like to have their shipments go. They say they want the shipment to go through Fort Worth and Kansas City, for example. They say they want a ship-
1635 ment to go through Omaha and St. Louis, or through a hundred other gateways. That gives us a decided advantage in many respects. But the idea, as I understand your question, that we compete upon a system of cut rates is utterly impracticable. You cannot get up cut rates any more.

Q. If you have made up your minds apparently, both of you, that each is entitled to half of this traffic and during each season before the season comes on, you look over the field and determine what the volume of traffic will be and then divide your cars for the half of it, as Mr. Chambers testified that he does and I suppose you do a corresponding thing, and that accomplishes, as Mr. Call suggested a division of the traffic, what is the use of competing, either by soliciting shipments or by making quick time or anything of that sort. Why don't you let the thing run and take the fruit that

is offered and let it divide itself under those rates? That is a suggestion that might occur to anyone.

A. In other words, because we are not cutting rates, that we should neglect the industry?

Q. Why is it necessary to expedite the time when you divide the business through your equipment?

A. For the simply reason that we expedited the time when we were the only road handling oranges.

Q. If the Santa Fe has only got cars enough to carry one-half of the business, it cannot carry any more, can it?

A. It has got only cars enough to handle half, yes.

Q. If it has no capacity to carry more than half, why is it necessary for the Southern Pacific Company to do anything to get
1636 its half? Why wouldn't the half necessarily come to you without any effort on your part to expedite the time or give good service?

A. I would not like to trust to it coming to us. I do not believe it would, but there is an economic condition in there that is as important to us as the fact of our competitor being present. Whether he takes the business away from us or whether we do not get the business by reason of its languishing, our loss is the same. We have got to take care of this business and develop it and give it time and service or the business will not thrive, but we cannot take any chances on getting our fifty per cent. out of it. I do not know why if we were careless about it the Santa Fe could not probably put in equipment and take fifty or sixty or seventy-five per cent. of it. We do not take chances of that kind. If we find we are not getting our share of the crop we go after our representative down here and say, "Get in here and get our share of that business."

Q. Why don't you try to get sixty per cent. of it?

A. Because it would cut rates down to only half and we would get half. We will meet each other's rates as fast as we put them in. Neither will have an advantage of rates. The only way you could get an advantage would be to make a secret deal and say, "Here! On condition of your giving us a certain business we will make certain rates." But we cannot do that; we are bound to make rates the same; because the actual conditions are such that we cannot do otherwise. The law makes it impossible for us to do anything of that kind. I know I cannot take over fifty per cent. of the business, for I know my competitor is as active as I am. At least
1637 I have always found him so.

Q. You have no reason to doubt that he is?

A. I know he is. I have always found him so.

Mr. HERRIN: I don't think there is any necessity of going into the routing question.

The COMMISSIONER: I don't think so.

By Mr. BURKS:

Q. Are you not of the opinion that the competition which exists among the growers themselves and particularly that which exists among the various shippers and their desire to get their products to the most advantageous markets, is the cause in a large degre- of the low prices and the unsatisfactory prices which have prevailed in the citrus fruit industry?

A. That is undoubtedly so. The growers admit it themselves.

Q. Are you not of the opinion that that has had more to do with the dissatisfaction which has been expressed at this hearing and elsewhere, than the traffic agreements—than the rates, rather, offered by the various railroads?

A. The demand for reduction comes because of low prices in the East. Those low prices in the East are practically causes by the shippers competing with each other in California fruit, and they drop the prices against each other.

Q. So if a low rate should prevail, if the same conditions prevailed, there would still be that dissatisfaction?

A. Under the conditions that have prevailed up to the first of this month, the drop in rates would simply cause a drop of price.

Q. In arranging for your cars, after you have estimated
1638 the total crop of citrus fruit in California, you estimate what will be your requirements and upon that estimate you are satisfied that it will be so much, and you arrange for a sufficient supply of cars to handle as much of the business as the competitive conditions will permit, do you not?

A. Well——

Q. You arrange for all the cars which you think the conditions require?

A. Yes, we estimate the crop at a certain number of cars. We know that only half that acreage is tributary to our rails and the other half is served jointly by both companies. We know our competitor has just as good a chance as we have in the joint territory. We know we have the first call in the territory that is tributary to us, just as they have in the territory that is tributary to them. And we base our calls for cars upon that.

Q. And you estimate the largest amount which you think that your competitor will take?

A. We estimate it at fifty per cent., because for many years that is the proportion that we have been taking approximately—not simply from January 1st, 1900, but for years before that under all sorts of conditions. We finally found that fifty per cent. is as much as we are able to get.

By the COMMISSIONER:

Q. Do you route most of these oranges by your Ogden route or El Paso route?

A. We route it generally speaking in the way it was routed be-

fore we took charge of the routing. Climatic conditions fix that.
During the early part of the season, the El Paso route is the
1639 preferable route because it is so warm. During the latter part of the season the Ogden is the best route because it is cool.

Q. Which involves the longer haul to destination?

A. The Ogden route.

Q. About what is the average haul to destination with oranges moving over your line under a rate of $1.25?

A. I should suppose about—do you mean the average through haul?

Q. The average through haul from Los Angeles to destination.

Mr. CALL: You are referring to territory east of the Rocky mountains?

The COMMISSIONER: I applied it to all oranges which take rate of $1.25.

Mr. CALL: Oh, yes, I beg your pardon.

A. I don't know. It is a more difficult question for us than it would be with our Santa Fe friends, because we have so many roads. I can make a guess at it and tell pretty closely. I can get figures on it.

Q. If you can come within a few hundred miles it will do just as well as anything.

Mr. HERRIN: Would it be any shorter with oranges going by the Santa Fe?

A. It would be longer. I would say it would be 250 miles longer.

By the COMMISSIONER:

Q. You send it 3000 miles in your case then. You started to say sixty-two per cent. of all the oranges were for points east of Chicago?

A. Sixty-two and seven-tenths per cent.

1640 Q. Now, what part of the total haul is over the lines of the Southern Pacific road?

A. It is 1188 miles from Los Angeles to Ogden and 813 miles from Los Angeles to El Paso.

Q. Do you haul any oranges to New Orleans?

A. Yes sir. It is, say 2000 miles to New Orleans.

Q. Where would oranges intended for St. Louis leave your road going by the El Paso route?

A. They would leave our line at El Paso.

Q. Now, if you can, I would be glad to have you make an estimate of the total haul and also the length of the haul over your line. Do you know the amount of money which you get out of this orange traffic in the course of a year for any given traffic?

A. No. I can find out, but I don't know it.

Q. You say your division to El Paso is forty-nine per cent.?

A. Forty-nine per cent. of eighty-five per cent.

Q. Forty-nine per cent. of the——

A. Rate west of Kansas City.

Q. Have you any impression as to what part of the rate on the average the Southern Pacific receives in case of those oranges which take a rate of $1.25?

A. On the average I would suppose that we receive about thirty-five cents.

By Mr. HERRIN:

Q. Of the $1.25?

A. Yes. That is a rough calculation. I am figuring on sixty-two and seven-tenths east of Chicago.

By Mr. CALL:

Q. Do you mean thirty-five per cent. or thirty-five cents?

1641 A. Thirty-five cents out of the $1.25. I think it is about that. When I say I don't know about these questions I know where to find them. I don't carry them in my head.

Mr. DREHER: If your honor please, I am a grower and shipper, and suggest that I might want to say something to the court.

The COMMISSIONER: Certainly, sir. You may receive the oath.

1642 WILLIAM SPROULE, p. 579 and 580.

Recalled and testified as follows:

The COMMISSIONER: I would like to ask you about the change of the estimated weight from 70 to 72 pounds.

A. The intention of the estimated weight is simply to provide an easy way of determining the actual weight of the load. It has been arranged in that way at the request of shippers, and when the estimated weight was 70 pounds, it was 70 pounds on the average. It is now 72 pounds on the average. We are not trying to raise the rate or to lower the rate by the device of the estimated weight. We are simply trying to reach an average that would be satisfactory to the shippers generally, and we have found at the present basis it is. On lemons it is 84 pounds. Shipper after shipper has testified that the weight on oranges was 72 pounds, but that on lemons it was 84 pounds per box. Oranges weight 72 pounds and lemons weight 84 pounds per box.

A. And it used to be 70 pounds?

A. The weight was 70 pounds then.

By Mr. HERRIN:

Q. At the time you estimated the weight as 70 pounds, did you charge any less for the actual weight carried than now, taking it as 72 pounds?

A. No sir. We charged 70 pounds then because that was the

weight, just as we now charge 72 pounds because that is the weight now.

Q. Mr. Dreher has said the packing has been improved?

A. I think Mr. Dreher stated that, that they fill the box heavier than they used to.

1643 Testimony of W. G. Neimeyer.

Direct examination.

By Mr. HERRIN:

Page 580 to 586, inclusive:

Q. Mr. Neimeyer, what official position do you hold in connection with the Southern Pacific Company?

A. General agent at Chicago.

Q. How long have you been there?

A. 13 years.

Q. Do you have to do anything with the orange and lemon shipments from California to eastern points?

A. Yes sir.

Q. You handle largely these diversions, I suppose?

A. Almost entirely for east of the Missouri river excepting those which are made direct.

Q. In a general way how extensive is the practice of diversions?

A. Well, I should think it was forty to sixty per cent. of the entire railroad shipments.

Q. Are diverted from other than the original destination?

A. Yes sir.

Q. And sometimes are cars diverted more than once?

A. Often five times. Frequently three or four times.

Q. In a general way, what expense does it put the company to to do that?

A. It requires a good deal of telegraphing which we have got to do by Western Union. Requires a staff of employees to
1644 attend to that business, and we have to work over hours to do it, too.

Q. Now, you have heard the testimony about the decaying of this fruit from prolonged time of shipment. I will ask you if you know, according to your experience, how much,—or whether much of this delay that we hear of is not on account of cars standing at the station before they are diverted to other points and whether you know of such instances?

A. Frequently shipments are refused after inspection, sometimes indicating that there has been some delay.

Q. Now, shipments arrive at Chicago, and then they are examined or rejected?

A. Yes sir.

Q. Then they are ordered diverted?
A. Yes sir.
Q. Perhaps two or three times afterwards?
A. Yes sir.
Q. It might be diverted to Detroit?
A. Yes sir.
Q. And then be diverted beyond there?
A. Yes sir, to Buffalo, New York.
Q. Is there any delay in a car standing—is there delay because they stand on the tracks uncalled for?
A. I have known cars to remain on the tracks in Chicago a week and then be diverted. There is no delay in accomplishing the diversion.
Q. There is none?
A. No sir.
Q. Is the diversion prompt?
A. The diversion is prompt if when can be done at all.

1645 Q. Have you any idea to what extent these delays are really taken up after the shipment is completed and before the diversion is ordered. Of course one or two cars we don't know anything about that?
A. I think it is rather general.
Q. About how general; to what extent would you say?
A. I would say thirty per cent. of the entire goods are handled in that way.
Q. After they reach the original point of destination?
A. After they reach the original point of destination.
Q. Then the car remains for a day or two or more?
A. Yes sir.
Q. You get an order for diversion and you divert it?
A. Yes sir; generally after it has been inspected and refused.
Q. What about the care given these shipments as compared with other classes of freight? You know as agent there what you have to do?
A. The greatest care is given. Voluntarily the carriers will put them in roundhouses in cold weather and endeavor to give them expedited service and they are generally looked after beyond any other character of freight I have had business with. Other perishable freight even is not given the same attention.

Mr. HERRIN: That is all.

1646 Cross-examination.

By Mr. CALL:

Q. The testimony shows that sixty odd per cent. of the freight is destined for points beyond Chicago?
A. Yes sir.
Q. Then the bulk of the diversions are made on lines connecting with the Southern Pacific—not on Southern Pacific lines?

A. The bulk of the diversions are made on lines connecting with the Southern Pacific.

Q. About sixty per cent.?

A. Yes sir.

Q. What arrangement is made between the Southern Pacific and connecting lines concerning that diversion? Is that an item that is covered by a traffic understanding?

A. No sir. I believe there is an understanding that they will obey a request of that kind and correct the billing.

Q. Those diversions are made at the expense of the connecting lines?

A. No sir. They are made so far as telegraphing is concerned at our expense.

Q. I mean so far as the expense of transfer is concerned?

A. In case of a double switch, yes, but the expense of telegraphing and labor incident is borne by the terminal line.

By Mr. HERRIN:

Q. If the original destination of a shipment was Chicago and the car was unloaded there, the proportion of the Southern Pacific and Union Pacific would be different from that of a car going to Buffalo or New York or Boston?

1647 A. Yes.

Q. And in the case a car is diverted three or four or five times, to as many points east of Chicago, the final division of the rate depends upon the final destination?

A. Final destination.

By Mr. CALL:

Q. So that as a result of that it would increase the percentage of the initial line?

A. Decreases it.

By Mr. HERRIN:

Q. If is was shipped to a point at destination on the Atlantic seaboard, if a diversion was made to any point this side of that?

A. That is rarely done. It is generally shipped to the Missouri river or Chicago and diverted.

Q. But it may be done the other way?

A. Yes sir.

Q. Mr. Call is correct, if it is shipped to New York, you could divert, and that would increase the original revenue?

A. Yes sir.

By Mr. BURKS:

Q. You have heard some testimony relative to the unsatisfactory and low prices in the eastern markets. Is it not your opinion that those conditions are largely due to the competition among the va-

rious fruit shippers, rather than to the rates charged for the carrying of this traffic?

A. It is. I have seen several shipments go to a small town, and its capacity was only about one car. I have seen several cars go there.

Q. And the anxiety of each concern to dispose of its product at the earliest date possible results in the fluctuation of the market?

1648 A. Yes.

By Mr. HERRIN:

Q. You think people east of the Missouri river are going to eat so many oranges anyway and they will pay whatever is necessary to get them?

A. Yes sir.

Q. And a reduction of price would not increase the quantity generally?

A. It might with the poorer classes, but they are getting pretty prosperous now.

By Mr. BURKS:

Q. Is it your opinion, Mr. Neimeyer, that even if there were a reduction in the rate charged for transportation on citrus fruits, that there would be any material benefit to the grower therefrom unless the methods now used by the various shippers were changed?

A. I think it is owing to the competition, the less benefit the growers will get.

Q. Why do you think the reduction in the lemon rate has been a necessity?

A. From what I have learned at this hearing I am inclined to think it was necessary. I was not familiar with its condition before.

By Mr. HERRIN:

Q. Manifestly if the whole orange business of California was concentrated in one management so it could be placed in the market so as to avoid competition between different growers, it would be better, wouldn't it?

A. I am inclined to think so.

Q. The effort to get away from that competition is to be commended, isn't it?

A. Yes sir, I am inclined to think so.

1649 Mr. CALL: Wouldn't it make some difference who got the benefit?

Mr. HERRIN: It has been testified that the grower gets the benefit.

The COMMISSIONER: That seems to be all, Mr. Neimeyer.

1650 Testimony of W. B. Biddle, Pages 495 and 496.

Q. By what method would you go to work to change rates if you wanted to change them?

A. From where?

Q. Citrus fruit rates from California?

A. I would make up my mind in the first place whether a change was necessary. I would consult the Southern Pacific people in advance. If I could convince them that my views were right about it, the rate would be published; I would publish the rate. They would have the information as to what we proposed to do, and would do the same on the same day. If I could not convince them, they might convince me that my views were wrong and I would change my opinion; but, failing in that, if I still thought I ought to do it, I would publish the rate. As a matter of common sense and courtesy, I would give them the information so they could make the same rate on the same day. If they didn't want to, they wouldn't do it. If we published it, in that way the tariff would be published. It would be published by the Atchison road, and Mr. Countiss would not have anything to do with it, because he has no authority to do anything until it is given to him by the different roads.

1651 Testimony of Edwin T. Earl.

Pages 444 to 446, Inclusive.

Mr. LAMBERTSON: How about the attachment of the St. Louis car testified to by Mr. Westfall. What are the facts?

Mr. EARL: The facts are, briefly, these: The Earl Fruit Company sold some fruit to Levy & Co. (or whatever the firm name is) in St. Louis, and the firm, on arrival of the fruit accepted the drafts and appropriated the fruit. When the drafts fell due they failed to pay them. They also at the same time, it appears bought fruit from Mr. Westfall and probably other firms, and when their drafts fell due they failed to pay them. The Earl Fruit Company's bank correspondent in St. Louis immediately wired when the draft was not paid, advising them of the fact, and the Earl Fruit Company instructed one of their employees at Omaha to go to St. Louis immediately and protect our interests—the Earl Fruit Company's. On his arrival at St. Louis he learned in some way from the railroads there that this man Levy had diverted some of those cars that he bought from us and others to other points east of St. Louis or south; among others he learned a car had gone to Indianapolis and another car had gone to Nashville. He did not know the car numbers, did not know who the fruit belonged to even; it might have been the Earl Fruit Company's own fruit, but he immediately wired the Earl Fruit Company at Los Angeles, those facts, and the Earl

Fruit Company at Los Angeles immediately wired to their correspondents in Nashville asking them to please investigate and ascertain if Levy had any fruit on track in some of the railroad yards in Nashville. The Earl Fruit Company also wired to another em-
1652 ployee in Chicago to go to Indianapolis and ascertain if there was any fruit on tracks there. The agent who went to Indianapolis from Chicago wired the car that had been diverted to Indianapolis had been diverted some where else and he could not find out where it was. The correspondent in Nashville wired Earl Fruit Company, Los Angeles that he found a car there on track, giving the car number. The Earl Fruit Company, Los Angeles, immediately wired the agent who was at Indianapolis who said that he could not find the car there to go to Nashville and attach the car. He then went down there and attached the car and sold it.

Testimony of Edwin T. Earl.

Pages 448 and 449.

Mr. HERRIN: Some of the witnesses for the complainant have testified that there has been a great deal of decay of fruit this season in shipment, and they give as one of the reasons for that the increased minimum. What do you know about that, Mr. Earl?

Mr. EARL: I know this, that my experience with the Earl Fruit Company for years has shown that decay occurs to orange shipments during every month of the year and that there are inherent defects in the fruit that we cannot detect at the time the fruit is shipped, and many other conditions that enter into it. The Earl Fruit Company has had the same experience this year. The fruit is loaded in large cars, but it arrives at destination in some instances in bad order. I assume it is on account of the unusually dry seasons we have had in southern California for the last three or four years, the result being the trees have not the vitality and ability to
1653 properly mature the fruit. It has prematurely ripened this year, and our experience in handling fruit is where it does not ripen naturally as in an ordinary season that it is generally of a perishable, more tender nature.

Testimony of Edwin T. Earl.

Pages 493 and 494.

Mr. HERRIN: Now, I understood you to say that in some cases you have received from these railroad companies an increased mileage. I want to ask you if you ever received from the Southern Pacific Company any excess of the mileage stipulated in the contracts between the Continental Fruit Express and that company, which have been produced here, under notice from the complainants?

Mr. EARL: No, we never received any additional mileage from the Southern Pacific.

Mr. HERRIN: Did you ever receive from the Southern Pacific Co. any rebate or rebates or allowance or anything at all in excess of your stipulated mileage?

Mr. EARL: Absolutely nothing.

Mr. HERRIN: That is all.

Mr. LAMBERTSON: Did the Earl Fruit Company ever receive any rebates from any source?

Mr. EARL: No sir.

Mr. LAMBERTSON: Did they ever receive any from the Continental Fruit Express?

Mr. EARL: Never.

Mr. LAMBERTSON: That is all.

1654 Mr. CALL: It is agreed and understood that the testimony offered on behalf of the Atchison, Topeka & Santa Fe Railway Company on December 28th, 1903, appearing at page 1075 of this record, is also offered on behalf of the Southern Pacific Railway Company.

Mr. FLINT: I now offer in evidence transcontinental east-bound special tariff effective May 8th, 1903.

The document last offered is marked "Defendant Southern Pacific Company's Exhibit 2."

Mr. FLINT: That is all I have at this time.

Mr. NORTON: I offer in evidence Transcontinental Freight Bureau east-bound special tariff effective December 1, 1902. And also Transcontinental Freight Bureau east-bound special tariff effective January 21, 1902.

The documents last offered are marked "Defendant Santa Fe Company's Exhibits Nos. 1 and 2."

O. L. RULE, a witness produced on behalf of the defendants Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and Southern California Railway Company, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. NORTON:

Q. What is your name?

A. O. L. Rule.

1655 Q. And your business?

A. Diversion clerk of the Santa Fe auditing department.

Q. How long have you been in that capacity?

A. Since May, 1895.

Q. What do you mean by "diverson clerk"?

A. I am handling the diversion requests of the shippers on oranges, citrus fruit, or anything else that comes up of that nature.

Q. And you have been handling that since 1895.
A. Yes sir.
Q. Have you been handling it exclusively yourself?
A. Been what?
Q. Have you been doing it alone, yourself, since 1895?
A. Except rare occasions when I have been sick, I have been doing it myself, always.

Mr. CALL: It is understood that this testimony is subject to all objections.
Mr. NORTON: Yes.

Q. I will ask you to tell, if you can, about what proportion of the citrus fruit shipments from southern California are diverted.
A. I can't say about the proportion this year, since the first of January. We have handled something like twelve or thirteen hundred—let's see; I should say about thirteen hundred diversions already since the first of the year.
Q. Well, it is in testimony here that since January 1, 1900, when the railroad companies have been routing the citrus fruit themselves, diversions have not been so prompt and satisfactory as they
1656 were before 1900. I will ask whether you know how they were handled before and after, with respect to promptness?
A. Based on my own experience in the work, I should say most certainly we haven't had anything like the trouble——
Q. Since 1900?
A. Within the last three or four years it has been going more smoothly than it did prior to that time. That I know.
Q. Can you tell whether the relative number of diversions has been increasing from year to year?
A. Why, the work is getting heavier every year, but I can't say what it is due to, whether it is due to increase of crop or anything of that kind. We are getting more work each year. I know that.
Q. You mean that the number of diversions is larger each succeeding year than it was the year before.
A. Take the season that closed with last November, we had a great many more than we did the previous year. This year I cannot speak for, because it is too early to tell much about it.
Q. Well, but has there been an increase, or not, in the number of diversions from one year to another? Has it been constantly increasing, or otherwise?
A. I think there has been a very steady increase each year.
Q. The claim is made by some shippers here, in testimony that before 1900 they attended to the diversions themselves, and that they were more satisfactory. Did you say that you were attending to the diversions before 1900?
A. I can't tell what experience shippers were having then,
1657 but I know that there has been less failures and less trouble of all kind in that work.

By Mr. CALL:

Q. The question was, were you attending to the diversions prior to January, 1900?

A. I have been doing it ever since 1895. There is no one else does it at all. I have a man to help me, but he does not send the messages and look after that work.

By Mr. NORTON:

Q. 1895 is when you began.

A. That is when I began with that work.

Q. Then the shippers were not doing all the diverting before 1900?

A. I think they did the bulk of it.

Q. Before 1900?

A. I think we did the bulk of the diverting. I could not tell how many they would divert then, because we would have no means of knowing in our office.

Q. What do you know about the failures to get cars diverted before 1900 and the failures to get orders filled since then?

A. Well, since that time we have known definitely where the cars are, and we are in position to wire direct wherever it is necessary, and we have had hardly any failures at all that were not due to the shippers filing the diversion too late.

Q. You mean that is since 1900?

A. Since 1900, every year, as we have got closer in control of that work and can watch it from the two offices, here and in Chicago.

Q. Before 1900, do I understand you to say that diversions
1658 were requested when you didn't know where the cars were?

A. If the shippers or eastern party makes one diversion we would know how it was routed, but if they made a second diversion on this end of that car I would be in doubt where that car was. We have naturally to take some chances. We would not have data to work on there.

Q. The point I want to get at is whether, since 1900, with the routing in your own hands, you have as good a knowledge or better of the situation of the cars than you did before.

A. I should say decidedly better.

Q. I will ask you to state what is the reason that an order to divert a car is not filled at any time, not carried out.

A. That the shippers asked?

Q. Yes; when the shippers ask for a car to be diverted, what reason is there for not carrying it out, at any time?

A. Why, we simply notify them that it was filed too late, that we could not catch it. We notify them all the time in that case.

Q. You don't understand the question. If an order is given to divert a car, what may prevent you from filling the order, if anything?

A. The car being beyond the junction where we would have to handle it. That would be the case.

Q. Would there be anything else?

A. If there could be anything else in any other way, there could be a message lost, or we could put too many in at one station and the agent might fail to catch one car. But we have got that
1659 guarded against by check now. It has caused no trouble this year, and last year very little.

Mr. NORTON: Do you think of anything, Mr. Flint, you want to ask?

Mr. FLINT: No.

Mr. NORTON: I think that is all.

1660 Cross-examination.

By Mr. CALL:

Q. Can you state the number of cars that has been sent through without diversion and the number that has been diverted?

A. Why, I keep no record, I have no record on my desk of the number of cars shipped, and we keep no statistics, for the reason that the time is practically all taken up getting those diversion messages out and keeping them moving. We can't keep any statistical record without delaying the more important part of the work.

Q. Well, now, of the cars that are actually diverted, can you state what is the average number of diversions that have been made on all the cars that have gone over your lines that have actually been diverted?

A. During any one season?

Q. During any one season.

A. Well, take the season that closed the first of last November, I should say we had about 12,000.

Q. 12,000 what?

A. Diversions.

Q. Well, out of how many cars?

A. I couldn't tell you how many cars were shipped. I think Mr. Chambers' office could tell you that better. I am not posted on that.

Q. Do you mean now, 12,000 diversions or 12,000 cars?

A. Well, we count in the diversions. We figure if the car is diverted twice, so far as the work involved and the risk involved of not catching it, it is just the same as two different diversions.

1661 Q. For what year were those 12,000 diversions?

A. I am figuring on last year, 1902-'03. That is as far back as I have the figures fresh in my mind.

Q. Well, then, you cannot state how many times, on an average, the cars were diverted?

A. Why, I should say the most number of diversions on one car, as a general proposition, would be about three. That is not at all unusual.

Q. Well, the Santa Fe carried about 12,000 car loads during that year, 1902–'03. Then if there were 12,000 diversions and they averaged three to a car of those that were diverted——

A. Well, it wouldn't hold good three to a car on all the cars.

Q. But I say on those that were diverted.

A. Possibly.

Q. Then the number of cars diverted out of the whole number would be about one sixth of the whole, according to your figures.

A. If we figure that total shipment is correct, I presume that is the way it would figure out. I am only going by actual diversion figures. That is all I am up on.

Mr. MORTON: And the assumption of the counsel is correct.

Mr. CALL: The figures show the number of cars that you shipped that season. That is all.

1662 Redirect examination.

By Mr. NORTON:

Q. I will ask whether you ever got requests for diversions to points not covered by the joint tariffs or by the distribution sheets which you were not able to fill.

A. Where the through rate would apply but the routing was not on the distribution sheet, do you mean?

Q. Yes.

A. I would not pass on those. They go down to the traffic department to figure out some route where the rate does apply. We have to look out for a shortage there.

Mr. NORTON: That is all.

O. L. RULE.

1663 E. CHAMBERS, a witness produced on behalf of the Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company and Southern California Railway Company, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth testified as follows:

Direct examination.

By Mr. NORTON:

Q. Mr. Chambers, in volume 1, page 337, of the record, Mr. Nadal stated that he could not get Wisconsin Central delivery into Milwaukee, the Wisconsin Central not having divisions, but that the Santa Fe had divisions that way. What have you to say to that, if anything?

A. What does he say? The Santa Fe had divisions?

Q. Yes.

A. Well, the Santa Fe Company have arrangements with the Wisconsin Central road for the application of the through rate to all points on its line for a number of years. No trouble about getting Wisconsin delivery on shipments moving via the Santa Fe.

Q. Into Milwaukee?

A. Into Milwaukee.

Q. Well, might he have had it at the time he mentioned?

A. Yes sir.

Q. I should like to ask you whether E. T. Earl, who has been mentioned freely in the testimony, was ever given the right to route shipments made by him, since 1900, when the privilege was denied to others.

1664 A. He was treated just the same as other shippers. Got no more privilege than any of the other shippers on the Santa Fe lines.

Q. In volume 1, page 180, witness McLoud stated that in the winter of 1901–2 he had to take Southern Pacific cars when the Santa Fe had one hundred and fifty to three hundred idle cars stored at Lake View. What have you to say to that?

A. I don't think the Santa Fe Company ever stored any cars at Lake View, because that is on the branch line and it would require an extra service or movement of the cars in order to get them to loading points.

Q. Well, Mr. McLoud said he was told that it had that number, but I want you to deal with the question anyway.

A. Well, he was mistaken or misinformed.

Q. I would like to ask you also about the statement of the witness, A. G. Stearns, of Highlands, on page 195 of volume 1, that the Santa Fe tried to make him take S. P. cars when the side-tracks opposite his warehouse at Highlands were lined with Santa Fe cars. How many cars would it take to line those tracks?

A. I think the regular side-track at Highlands holds only about five or six cars, and there is located on that track also a packing house. But I recollect something about the controversy we had with—the question that came up with Mr. Stearns. It was at a time that the Santa Fe didn't have sufficient of its own cars to fill all of the orders on its line and had to get some Southern Pacific cars. Mr. Stearns objected to loading the Southern Pacific cars We did supply some shippers with Santa Fe cars that day.

1665 We had to divide up what cars we had and Stearns was sent Southern Pacific cars. But he objected so hard that after that we gave him the Santa Fe cars; but in doing that we had to take them away, probably, from some other shippers and send them Southern Pacific cars.

Q. I will ask you whether you acceded to his request as far as practicable, or not.

A. Yes sir, we did. We found some other shipper on the line that didn't object to using Southern Pacific cars.

Q. On page 299, of volume 1, the witness Nadal testified that

sometimes cars were loaded on the Santa Fe, turned over to the S. P., when destined to Santa Fe points, and subsequently turned back to the Santa Fe in Colorado and elsewhere. What about that, if anything?

A. I think he was mistaken in that. That would be against the rule in vogue on the Santa Fe lines. The Southern Pacific, in their routing circular and sheets, or routing circular, routing arrangements, do not recognize the Santa Fe line through Pueblo, although we have divisions that way.

Mr. CALL: May I ask a question in there?

A. I was going to say, I was going to explain, that it may be that a shipment en route that originated at some point on the Santa Fe and was destined to, say Omaha, on the Southern Pacific was diverted en route to some local point on the Santa Fe east of Colorado, in which case it would be delivered to the Santa Fe at Pueblo. That would be the only way of getting it on to the Santa Fe rails.

By Mr. CALL:

1666 Q. Regarding deciduous fruit originating on Southern California lines in northern California, north of the Tehachapi, going over the Central Pacific, isn't a large part of that diverted to the Santa Fe lines at Pueblo and other Colorado points?

A. Yes, we have a line with the Southern Pacific Company for deciduous fruits for the Southern Pacific Company's connections, Denver & Rio Grande.

Q. Those are carried over Santa Fe lines east?

A. Yes, they are carried from Pueblo over the Santa Fe lines.

Q. To eastern points.

A. That fruit, yes sir.

Q. Well, what is the reason of that arrangement? What is it for?

A. Well, most of that business originates in the extreme northern part of California, and it is always moved via Ogden. The shippers think that is the coolest route, best route to send it, rather than sending it around through the San Joaquin valley. We don't agree with them fully on that, but that is the best that we have been able to do so far—is to get our share of it at Pueblo. I would say there is very little—in fact no deciduous fruit moves east from southern California and from the principal point in the San Joaquin valley probably 95 per cent. of the deciduous fruit originates north of Stockton on the Southern Pacific rails.

By Mr. NORTON:

1667 Q. There is a statement by Mr. Nadal, at page 344, of volume 1. He does not make it very clear, but I understand that on November 27, 1902, a train load of oranges was delayed nine hours under an order giving twenty empty cars preference. He does not say whether the cars were going east or west.

Mr. CALL: I think it appears in another place there which way they were going. Going east.

Mr. NORTON: They were going east?

Mr. CALL: I think he says so at some other point in that testimony.

By Mr. NORTON:

Q. Well, what would you say as to that, Mr. Chambers? Have you any explanation, or can it be explained?

A. Well, I can't see how the empty cars would be moving east at that time of the year, because the great proportion of our loaded movement is east-bound during October—well, August, September, October and November, and part of December; and every year we move empty cars west-bound, both the refrigerator cars for citrus fruits and the box cars for other California products.

Q. Well, do you know whether there is any order of preference with respect to loaded cars and empties or loads of different characters, such as perishable freight and unperishable?

A. Perishable freight of all kinds takes preference over any other business moving, any other freight traffic.

Q. And would it necessarily, then, take preference over the empty cars?

A. Over the empty cars.

Q. Mr. Nadal made a statement on page 362 of volume 1, about a car of oranges could not be consigned to Chicago by way of Butte. I don't understand it well. I will ask you whether the joint tariffs applied to Butte.

A. Not—the joint tariff applying to points east of Colorado
1668 does not apply to Butte.

Q. Well, is that the explanation as to why——

A. I think that is the explanation. There is no route to Chicago for citrus fruits through Butte. It wouldn't be possible to send a shipment from southern California to Chicago and protect the common point rate. No arrangements for divisions that way.

Mr. NORTON: That is all.

Mr. CALL: I have nothing.

EDWARD CHAMBERS.

1669 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, Defendants. } No. 1039.

Testimony taken before Alton M. Cates, special examiner and commissioner, in the above entitled cause on February 4, 1904, at room 308 Currier building, Los Angeles, California, on behalf of the complainant.

Present: Joseph H. Call, special assistant United States attorney; Frank P. Flint, attorney for Southern Pacific Company, and T. J. Norton, attorney for the Atchison, Topeka & Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, and the Southern California Railway Company.

And thereupon the following proceedings were had.

1670 A. H. NAFTZGER, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. CALL:

Q. Please state your name, residence, and occupation.

A. A. H. Naftzger. Los Angeles. Fruit shipper. Perhaps more properly, the manager of the California Fruit Agency.

Q. How long have you been manager of the California Fruit Agency?

A. Ever since it was organized, last April. Prior to that I was the manager of the Southern California Fruit Exchange for five or six or seven years. I don't remember exactly how long.

Q. What was the business of the Southern California Fruit Exchange during the orange season commencing December 1, 1901, and ending December 1, 1902?

A. Shipping oranges, selling them.

Q. What roads did the exchange ship over, and from what points and to what points?

A. We shipped from the packing points in southern California to all eastern markets, using the two initial lines, the Southern Pacific and Santa Fe and their connections.

Q. And to what eastern points. All through the East, did you say?

A. All what we call car load points, all important cities
1671 that are large enough to buy oranges and lemons in car loads.

Q. Were you manager during that period?

A. What period is that?

Q. That is the period of the orange season for 1901 '02.

A. Yes sir.

Q. What company is or was the Overland Fruit Dispatch, and what was their business?

A. The Overland Fruit Dispatch was a corporation operating cars in the years 1895, '6 and '7, I think; refrigerator cars engaged in the orange and lemon and other fruit traffic out of southern California.

Q. It was a car line operating refrigerator cars.

A. Yes sir, for citrus fruit. Yes, and other fruits, but chiefly engaged in handling citrus fruit.

Q. What connection, if any, did you have with the Overland Fruit Dispatch?

A. I was the president and manager.

Q. During the period 1895 and '6?

A. Yes sir. I think we operated the years—the seasons of 1895 and '6, and 1896 and '7, if my memory serves me properly.

Q. It has been testified in this case, or claimed, on behalf of the defendants that since the promulgation of the rule or regulation of the defendant railroads reserving to themselves the absolute right to route citrus fruit over connecting lines and to points of destination, that since that time, January 1, 1900, that the service has been better and that the time en route has been shortened. What do you say as to that? What are the facts?

1672 A. I should say that the time has been materially longer, or slower, and the service, upon the whole, less satisfactory.

Q. How extensive has been your personal experience in the shipping of citrus fruit before January 1, 1900, and subsequent to that time, from southern California to the eastern markets?

A. Well, without refreshing my memory, I am obliged to estimate a little. I should say that under my management we shipped, prior to January 1st, 1900, more than 25,000 car-loads, and since that about as many more.

Q. Can you state from the records of the Overland Fruit Dispatch and from the records of the Southern California Fruit Exchange, what was the actual time en route of cars of citrus fruit shipped from southern California to points east of the Rocky mountains, being common points reached by shipments via Santa Fe railway and Southern Pacific railway, during a given period, say from December, 1895, to May, 1896, over the Santa Fe, showing the average time en route to destination and over the Santa Fe from May to December 1901 and '2, and shipped by the exchanges or shippers mentioned?

A. I can.

Q. And if you can, please state what that time is as actually shown from the records of those shippers.

A. I have had the records carefully examined, and taken all the cars shipped by us between the months of December and May, inclusive, in the year 1895 and '6, that were direct shipments, not reconsigned or diverted. Do you wish me to give the time to the different points?

1673 Q. This is the original?

A. Yes. I have the same memorandum.

Q. Yes. All right. Well, you have it there compiled in a statement, have you?

A. Yes, sir.

Q. And that statement is made from the records of the Southern California Fruit Exchange and the Overland Fruit Dispatch.

A. The statement as to the shipments for the season of 1895 and '96 are the shipments of the Southern California Fruit Exchange made in the cars handled and operated by the Overland Fruit Dispatch.

Q. For 1895 and '6.

A. Yes sir. The statement as to the shipments for the season of 1901 and '2, December to May, inclusive, are the shipments made by the Southern California Fruit Exchange in the cars furnished by the Santa Fe railway or the Southern Pacific as the case may be.

Mr. CALL: Well, I will offer this table in evidence, to be marked "Complainant's Exhibit Naftzger 1."

Mr. NORTON: We might interpose the objection here, probably, that the admission of it is objected to because it does not appear to have been made from the witness's own knowledge or from books kept by him of which he had knowledge, and for the reason that it is hearsay.

1674 The document last offered was marked "Complainant's Exhibit Naftzger 1," and is as follows:

"Table showing comparative time on all shipments to common points via Overland Fruit Despatch over Santa Fe during period named and shipments of Southern California Fruit Exchange via Southern Pacific and Santa Fe during period named. All shipments in 1901–2 were of undiverted cars, showing all shipments upon which records have been kept.

From So. Cal. shipping points to	Santa Fe R. Average Dec. to May, 1895–6. Days en route.	Santa Fe R. Aver. Dec. to May, 1901–2. Days en route.	S. P. Co. Average Dec. to May, 1901–2. Days en route.
Buffalo	9.54	11.90	12.52
Boston	11.56	14.51	15.40
Chicago	7.36	9.32	10.90
Cincinnati	9.50	10.20	11.30
Cleveland	9.36	10.54	10.36
Columbus	8.80	10.70	12.34
Denver	5.43	6.17	9.31
Des Moines	8.50	8.84	9.41
Hartford, Conn	12.00	14.00	17.00
Indianapolis	8.54	10.50	11.50
Kansas City	6.10	7.54	8.48
Louisville	8.30	9.40	9.50
Memphis	7.60	11.50	9.79
Milwaukee	7.80	9.35	10.63
Minneapolis	8.17	9.96	11.15
New York	11.79	13.27	14.78
Omaha	7.50	8.30	9.37
Pittsburg	9.62	11.61	12.94
Philadelphia	11.30	13.53	14.30
Peoria	7.50	9.26	9.90
Providence	11.00	13.85	14.03
St. Louis	7.58	9.60	10.20
Waterloo	7.70	8.56	10.60
Washington, D. C.	9.00	12.00	13.06
Wichita	5.00	6.64	7.26

1675 By Mr. CALL:

Q. I will ask you, Mr. Naftzger, if the books of these companies are within your control and subject to your inspection, and whether the statement or table has been compiled directly under your supervisions and direction?

A. Yes sir.

Q. And whether the table correctly sets forth what it purports to contain.

A. It does.

Q. It has been testified, Mr. Naftzger, or claimed, that since the routing rule of January 1, 1900, went into effect, that the facilities

for making diversions have been greatly improved. What do you have to say about that?

A. Well, I should say that so far as the diversions are made by the initial carriers themselves, they probably have been improved. When the cars have passed off the lines of the initial carries, I think the service is materially less satisfactory to the shippers than it was before. I think we miss more—I think more cars fail of diversion than when we knew the movement and were able to ask the line holding the shipment at the time, direct, to re-consign or divert.

Q. The regulation or rule in question, then, has worked disadvantageously and prejudicially to the shipper?

A. Why, yes sir, I think it has.

Q. Can you state, without compiling records, what the average number of diversions of citrus fruit has been for any given period?

A. Well, I would say in answer to that, that by reason of a complaint, by the carriers, of excessive diversions, I took occa-
1676 sion to have our records for the season two years ago, I think investigated, and I found that our diversions averaged six-tenths of a diversion to a car; in other words, sixty out of every hundred, on the average, were diverted once.

Q. Those were shipments made by what concern?

A. The Southern California Fruit Exchange.

Q. And aggregated some thousands of cars?

A. Yes sir, I should say nine or ten thousand cars. It may have been more than that. I am not able to say exactly, but it ran into a good many thousands. I know that.

Mr. CALL: That is all.

Cross-examination.

By Mr. NORTON:

Q. Mr. Naftzger, why, in the preparation of this table, did you select the average time from December to May 1895 and '6, and the average time from December to May 1901 and '2, as showing the time of transit from southern California points east?

A. Well, we took 1895 and '96 because we had absolutely accurate records for that season of the movement as reported to us by the carriers themselves; that is, the passage of the cars at junction points. We took the year 1901 and '2 rather than the year 1900 and '01, because that was the year when the Santa Fe had its coal strike.

By Mr. CALL;

Q. That is, 1900 and '01.

A. Yes, 1900 and '01 was the year of their coal strike and our crop was very large. The next year, 1901 and '2 was materially a smaller crop, and we selected that because we were disposed to be fair in our comparisons.

1677 Q. What was the citrus crop in 1895 and '6? Do you know?

A. I think about 10,000 cars. But without referring to my figures, I should——

Q. What was it in 1901 and '2?

A. About 17,000 cars, as I remember, I——

Q. What was it in 1896 and '7?

A. I don't think I can guess, but I will file with you as part of my testimony, if you like, a statement showing what it was.

Q. No, I think that appears already in the testimony elsewhere.

A. Yes, I rather think it does.

Q. I thought you might remember.

A. I don't remember. I usually have a memorandum in my pocket, but for the moment I have not.

Mr. NORTON: I think that is all.

Mr. CALL: Mr. Flint, anything?

Mr. FLINT: I have nothing to ask.

Mr. CALL: One question I want to ask Mr. Naftzger.

Redirect examination.

By Mr. CALL:

Q. In 1895 and '6, covered by the period named in the statement, how did the time on the Southern Pacific compare with the time on the Santa Fe on orange shipments?

Mr. FLINT: Why, that shows for itself, doesn't it?

A. I will have to refer to the table for that.

Mr. FLINT: The table shows for itself, Mr. Call.

Mr. CALL: No, the table don't.

1678 A. Oh, for 1895 and '96.

Q. Yes sir.

A. Well, I have not made the comparison, for the reason that our records were not voluminous and complete.

Q. How did the time on the two roads compare upon the time schedules furnished by the roads? Was there any material difference in the time?

A. I think no material difference between them at that time.

Mr. CALL: That is all. Well, I have nothing more.

A. H. NAFTZGER.

It is stipulated that the testimony of Mr. Stubbs may be taken at any time before the case is submitted, on interrogatories and cross-interrogatories, the same to be taken before a notary public or any other officer authorized to administer oaths, either in the city of Chicago or such other place in the United States as Mr. Stubbs may be located.

Mr. NORTON I don't think I have anything more.

Mr. CALL: I don't know of anything, but I will ask to have the adjournment made. You may think of something you want to put in before the hearing. And we will just adjourn, subject to two days' notice, so that if we discover anything we can put it in.

Mr. NORTON: Very well.

Mr. FLINT: All right.

1679 UNITED STATES OF AMERICA, Southern District of California, } ss:

I, Alton M. Cates, special examiner and commissioner, hereby certify that the foregoing testimony in the above entitled cause, was taken before me at the times and places in record thereof indicated, and that the stipulations of counsel made upon the dates and at the times set forth therein, are true and correct; that before testifying each of the several witnesses was by me severally and duly sworn to tell the truth, the whole truth, and nothing but the truth, except the witness O. L. Rule, who, by agreement of counsel, was sworn at the time of signing his said testimony; that said testimony was taken in shorthand and by consent of parties, as shown in the foregoing record, the signature of some of the witnesses to their extended depositions, was waived, but in all other cases, the signature of each witness is appended to his respective deposition.

I further certify that the foregoing testimony transcribed and introduced into this cause, under the stipulation of counsel at page 2 of this record from the testimony taken in the cases of Consolidated Forwarding Company against The Southern Pacific Company and others, No. 575, and Southern California Fruit Agency against The Southern Pacific Company and others, No. 576, before the Interstate Commerce Commission, has been carefully compared by me and under my direction, and the foregoing transcript of such testimony is correct.

And I further certify that annexed hereto and as a part of this record are certain original exhibits introduced by the respective parties, as appears from the offers of such testimony and endorsements upon such respective exhibits and being numbered respectively Complainant's Exhibits 7 to 42 both numbers inclusive, and defendant Southern Pacific Company's Exhibits Numbers 1 and 2, and defendant Atchison, Topeka and Santa Fe Railway's Exhibits Numbers 1 and 2, and Complainant's Exhibit, Naftzger, No. 1.

Witness my hand this 11th day of April, 1904.

ALTON M. CATES,
Special Examiner and Commissioner.

Endorsed: Filed Apr. 11 1904 Wm. M. Van Dyke, clerk.

1680 Supersedes East-bound Special Tariff No. S. R. 376.

No. S. R. 383.

I. C. C. No. 269. Supersedes I. C. C. No. 262.

Trans-continental Freight Bureau.

East-bound Special Tariff.

Effective May 8, 1903.

This tariff contains the individual rates, rules and regulations of each company, respectively, and is subject to change by each company without the consent of any other company whose name appears hereon.

Applying via

Southern Pacific Company (Pacific System),

Via Ogden, Utah, Mojave, Cal., or El Paso, Tex.

Union Pacific railroad, Atchison, Topeka & Santa Fe R'y,
Denver & Rio Grande R. R., (Coast lines),
" El Paso Rock Island route," Texas & Pacific railway,
Southern Pacific Company (Atlantic system),
Santa Fe system (via Bakersfield or Barstow, Cal.),
Southern California railway, Atchison, Topeka & Santa Fe R'y
(Coast lines),

In connection with roads named on page 2 hereof.

Naming Rates on

Citrus fruits, carloads (min. wt. 26,000 lbs.),

from

The following " Pacific Coast terminals," viz :

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), Richmond, San Jose, Los Angeles, San Diego, and National City, Cal., Portland, East Portland and Albina, Ore., and " intermediate points " (as shown in circular No. 16–B (I. C. C. 218), amendments thereto or reissues thereof)

1681 to

Points located on or east of the western boundary of Missouri River common points territory and points east thereof on roads with which an agreed basis of divisions is in force, within the following territories :

New York, Boston and common points ; Pittsburgh, Buffalo and common points ; Cincinnati, Detroit and common points ; Chicago

and common points; Mississippi River common points; Missouri River common points and points west thereof (as described more fully on pages 2 to 26, inclusive, of east-bound tariff No. 3–D (I. C. C. 195), amendments thereto or superseding issues thereof.)

The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations hereinafter set forth.

The rates named in this tariff will be subject to the general rules and regulations governing the application of rates published in east-bound tariff No. 3–D (I. C. C. 195), which took effect July 1, 1902, amendments thereto or reissues thereof.

Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pac. sys. and Oregon lines),
San Francisco, Cal.

L. J. Spence, general eastern freight agent,
So. Pac. Co., New York, N. Y.

G. W. Luce, general freight agent,
So. Pac. Co. (Pacific system), San Francisco, Cal.

1682 W. E. Coman, general freight agent,
So. Pac. Co.'s lines in Oregon,
Portland, Ore.

G. A. Parkyns, asst. gen. freight agent,
So. Pac. Co. (Pacific system),
Los Angeles, Cal.

H. A. Jones, freight traffic manager,
So. Pac. Co. (Atl. sys.) Houston, Tex.

W. H. Masters, asst. traffic manager,
So. Pac. Co. (Atlantic system),
New Orleans, La.

C. K. Dunlap, general freight agent,
So. Pac. Co. (Atl. sys.) Houston, Tex.

A. S. Hughes, general traffic manager,
D. & R. G. R. R.
Denver, Colo.

S. H. Babcock, asst. gen. traffic manager,
D. & R. G. R. R.
Salt Lake City, Utah.

Fred. Wild, Jr., general freight agent,
D. & R. G. R. R.
Denver, Colo.

J. F. Holden, freight traffic manager,
C. R. I. & P. R'y, Chicago, Ill.

H. Gower, asst. freight traffic manager,
C. R. I. & P. R'y, Chicago, Ill.

H. H. Embry, general freight agent,
C. R. I. & P. R'y (lines west of Mo. river),
Kansas City, Mo.

A. N. Brown, general freight agent,
E. P. & N. E. R. R. and E. P. & N. E. Ry.
El Paso, Tex.
W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
1683 W. A. Bissell, asst. traffic manager,
Santa Fe system,
San Francisco, Cal.
J. E. Gorman, general freight agent,
A. T. & S. F. R'y, Topeka, Kas.
E. Chambers, general freight agent,
A. T. & S. F. R'y (coast lines), and Sou. Cal. R'y,
Los Angeles, Cal.
E. L. Sargent, general freight agent,
Texas & Pacific R'y, Dallas, Tex.
J. A. Monroe, freight traffic manager,
Union Pacific R. R., Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal., May 4, 1903.
Issued by R. H. Countiss, agent, 49 Second street, San Francisco, Cal.
Wired I. C. C. 5-4-1903. (Auth. 927.)

The through rates provided herein will apply in connection with the following named roads the traffic officials of which will certify their concurrence therein to the Interstate Commerce Commission.

Western Roads.

Atchison, Topeka & Santa Fe R'y.
Burlington & Missouri River R. R. in Nebraska.
Cane Belt R. R.
Chicago & Alton R'y.
Chicago & Northwestern R'y.
Chicago, Burlington & Kansas City R. R.
Chicago, Burlington & Quincy R'y.
1684 Chicago Great Western R'y.
Chicago, Milwaukee & St. Paul R'y.
Chicago, Peoria & St. Louis R'y of Illinois.
Chicago, Rock Island & El Paso R'y.
Chicago, Rock Island & Mexico R'y.
Chicago, Rock Island & Pacific R'y.
Chicago, Rock Island & Texas R'y.
Chicago, St. Paul, Minneapolis & Omaha R'y.
Choctaw Oklahoma & Gulf R. R.
Choctaw, Oklahoma & Texas R. R.
Colorado & Southern R'y.
Colorado Midland R'y.

Denver & Rio Grande R. R.
El Paso & Northeastern R. R.
El Paso & Northeastern R'y.
El Paso & Rock Island R'y.
Frisco system.
Fort Worth & Denver City R'y.
Ft. Worth & Rio Grande R'y.
Galveston, Harrisburg & San Antonio R'y
Galveston, Houston & Northern R'y.
Gulf, Beaumont & Great Northern R'y.
Gulf, Beaumont & Kansas City R'y.
Gulf, Colorado & Santa Fe R'y.
Hannibal & St. Joseph R. R.
Houston, East & West Texas R'y.
Houston & Texas Central R. R.
Illinois Central R. R.
International & Great Northern R. R.
Iowa Central R'y.
Kansas City, St. Joseph & Council Bluffs R. R.
Kansas City, Clinton & Springfield R'y.
1685 Kansas City Southern R'y.
Kansas City & Northern Connecting R. R.
Kansas City & Omaha R'y.
Keokuk & Western R. R.
Leavenworth & Topeka R'y.
Los Angeles Terminal R'y.
Minneapolis & St. Louis R. R.
Missouri Pacific R'y.
Missouri, Kansas & Texas R'y.
National City & Otay R'y.
New York, Texas & Mexican R'y.
Omaha, Kansas City & Eastern R. R.
Pecos system.
St. Joseph & Grand Island R'y.
St. Louis, Iron Mountain & Southern R'y.
St. Louis, Keokuk & North-Western R. R.
St. Louis Southwestern R'y system.
San Antonio & Aransas Pass R'y.
San Diego, Cuyamaca & Eastern R'y.
San Diego, Pacific Beach & La Jolla R'y.
Santa Fe system (Coast lines.)
Southern Pacific Co. (Atlantic system.)
Southern Pacific Co. (Pacific system.)
Texas Central R. R.
Texas Midland R. R.
Texas & New Orleans R. R.
Texas & Pacific R'y.
Union Pacific R. R.
Wabash R. R.

Weatherford Mineral Wells & N. W. R'y.
Wisconsin Central R'y.

1686 Central Freight Association Territory.

Ann Arbor R. R.
Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R. R.
Bessemer & Lake Erie R. R.
Chesapeake & Ohio R'y.
Chicago & Eastern Illinois R. R.
Chicago & Erie R. R.
Chicago, Indianapolis & Louisville R'y.
Chicago, Kalamazoo & Saginaw R'y.
Chicago, Peoria & St. Louis R'y of Illinois.
Cincinnati, Hamilton & Dayton R'y.
Cincinnati Northern R. R.
Cincinnati & Muskingum Valley R. R.
Cleveland & Marietta R'y.
Cleveland, Cincinnati, Chicago & St. Louis R'y.
Columbus, Sandusky & Hocking R. R.
Detroit Southern R. R.
Elgin, Joliet & Eastern R'y.
Ft. Wayne, Cincinnati & Louisville R. R.
Grand Rapids & Indiana R'y.
Grand Trunk Railway system:
Cincinnati, Saginaw & Mackinaw R. R.
Detroit, Grand Haven & Milwaukee R'y.
Grand Trunk R'y.
Grand Trunk Western R'y.
Toledo, Saginaw & Muskegon R'y.
Hocking Valley R'y.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Indiana, Decatur & Western R'y.
Lake Erie Alliance & Wheeling R. R.
1687 Lake Erie & Western R. R.
Lake Shore & Michigan Southern R'y.
Louisville, Handerson & St. Louis R'y.
Louisvile & Nashville R. R.
Marietta, Columbus & Cleveland R. R.
Michigan Central R. R.
New York, Chicago & St. Louis R. R.
Norfolk & Western R'y.
Northern Ohio R'y.
Ohio Central lines.
Penna. lines west of Pittsburgh, N. W. sys.
Penna. lines west of Pittsburgh, S. W. sys.
Pennsylvania R. R.

Pere Marquette R. R.
Pittsburg & Lake Erie R. R.
Pittsburgh, Lisbon & Western R. R.
Southern R'y.
Toledo, Peoria & Western R'y.
Toledo, St. Louis & Western R. R.
Vandalia line.
Wabash R. R.
Wheeling & Lake Erie R. R.

Trunk Line Territory.

Baltimore & Ohio R. R.
Canadian Pacific R'y.
Central New England R'y.
Central R. R. of New Jersey.
Central Vermont R'y.
Chesepeake & Ohio R'y.
Also in connection with
Merchants & Miners Transportation Co.
Old Dominion Steamship Co.
1688 Cornwall & Lebanon R. R.
Delaware & Hudson Co.
Delaware, Lackawanna & Western R. R.
Erie railroad.
Grand Trunk R'y.
Lehigh & Hudson River R'y.
Lehigh & New England R. R.
Lehigh Valley R. R.
Maryland & Pennsylvania R. R.
New Jersey & New York R. R.
New York Susquehanna & Western R. R.
New York Central & Hudson River R. R.
New York, Ontario & Western R'y.
Norfolk & Western R'y.
Pennsylvania R. R.
Pennsylvania & Northwestern R. R.
Philadelphia & Reading R'y.
Richmond, Fredericksburg & Potomac R. R.
Wallkill Valley R. R.
West Shore R. R.
Williamsport & North Branch R. R.

New England Roads.

Boston & Albany R. R.
Boston & Maine R. R.
Central New England R'y.
Central Vermont R'y.

Grand Trunk R'y.
Maine Central R. R.
New York, New Haven & Hartford R. R.
Rutland R. R.

1689 Southeastern Common Points.

(For application of rates to southeastern common points, see page 19 of east-bound tariff No. 3-D.)
Atlanta & West Point R. R.
Atlantic Coast Line R. R.
Central of Georgia R'y.
Charleston & Western Carolina R'y.
Columbia, Newberry & Laurens R. R.
Georgia R. R.
Georgia Southern & Florida R'y.
Merchants & Miners Transportation Co.
Norfolk & Western R'y.
Old Dominion Steamship Co.
Plant System.
Seaboard Air Line.
Southern railway.
Western & Atlantic railroad.
Western Railway Co. of Alabama.

Also

Illinois Central R. R.
Kansas City, Memphis & Birmingham R. R.
Louisville & Nashville R. R.
Mobile & Ohio R. R.
Nashville, Chattanooga & St. Louis R'y.
Queen & Crescent route:
Alabama & Vicksburg R'y.
Cincinnati, New Orleans & Texas Pacific R'y.
New Orleans, & Northeastern R. R.
Alabama Great Southern R. R.

1690 Oranges, lemons, and grape fruit in packages or in cars having fixed or transient crates for same, O. R. weather, decay, shortage, and delay, prepaid or guaranteed, at estimated weights shown below, in carloads, minimum weight 26,000 lbs.

Estimated Weights.

Oranges—72 pounds per box, when in standard size boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where oranges are packed, 11½ by 11½ by 24 inches).
Lemons—84 pounds per box of standard size, outside measurement 11 by 14½ by 27 inches.

Grape fruit—68 pounds per box, when in standard size orange boxes (*i. e.* outside measurement 12 inches by 12 inches by 26 inches; cubic space where fruit is packed, 11½ by 11½ by 24 inches).

If boxes of irregular size are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.

Oranges, Lemons, and Grape Fruit, in Straight or Mixed Carloads.

From—	To—	Rate in cents per 100 lbs.
San Francisco, Sacramento, Marysville, Stockton, Richmond, San Jose, Oakland (16th St.), Los Angeles, San Diego, National City, Cal., Portland, East Portland, Albina, Ore., and "intermediate points" as shown in circular No. 16-B (I. C. C. 218) amendments thereto or re-issues thereof.	*† Missouri River common points. * Mississippi River common points. * Chicago and common points. * Cincinnati, Detroit and common points. * Pittsburgh, Buffalo and common points. * New York, Boston and common points.	x 125

1691 Winter Relief Rate

on

Lemons in Straight Carloads.

This rate will be in effect until June 1, 1903.
Expires at close of business, May 31, 1903.

From—	To—	Rate in cents per 100 lbs.
San Francisco, Sacramento, Marysville, Stockton, Richmond, San Jose, Oakland (16th St.), Los Angeles, San Diego, National City, Cal., Portland, East Portland, Albina, Ore., and "intermediate points" as shown in circular No. 16-B (I. C. C. 218) amendments thereto or re-issues thereof.	* Colorado common points. *† Missouri River common points. * Mississippi River common points. * Chicago and common points. * Cincinnati, Detroit and common points. * Pittsburgh, Buffalo and common points. * New York, Boston and common points.	100

* As described on pages 2 to 26, inclusive, of east-bound tariff No. 3-D (I. C. C. No. 195), amendments thereto or superseding issues thereof.

† Rates named herein to Missouri River common points will also apply to the same points west thereof and via the same routes as authorized on pages 20 and 21 of east-bound tariff No. 3-D I. C. C. 195 (amendments thereto or superseding issues thereof) under head of General application of rates to points west of Missouri River territory.

Rates named herein do not include charge for icing and care of refrigeration of the fruit in transit, which charge is additional to rates herein named.

x Rate named will also apply on the citrus fruits named below:

"Citrus fruits" are the fruits of trees such as the orange, lemon, citron, etc., whose leaves do not fall in autumn. The principal "citrus fruits" are oranges, lemons, limes, mandarines, tangarins, citrons and grape fruits.

1692 The rates named above will also apply:—

Via Southern Pacific Co. only:

From stations on the Ventura branch of the Southern Pacific Company (Pacific system), including points on the Montalvo extension, viz: Oxnard, Somis, Cal., and points between; also from stations on the Ojai Valley branch, viz: Ventura Junction to Nordhoff, Cal, inclusive. (Will not apply in connection with Missouri, Kansas & Texas R'y.)

Via Santa Fe system only:

From all points on the National City & Otay railway, San Diego, Pacific Beach & La Jolla railway and San Diego, Cuyamaca & Eastern railway.

From points on the Southern California R'y south of Aliso, Cal.

Via Southern Pacific Co. or Santa Fe system:

(Winter relief rate on lemons will not apply from points named below to Colorado common points.)

From stations on the Oroville branch of the Southern Pacific Co., when routed via Ogden, Utah, or when routed via Mojave, Cal., in connection with Santa Fe system. (Will not apply in connection with Missouri, Kansas & Texas R'y.)

From all points on the Los Angeles Terminal railway.

Mixed Carload Shipments of Citrus and Deciduous Fruits.

Citrus and deciduous fruits may be forwarded in mixed carload lots, at the higher carload rate applying upon either commodity.

Mixed Carload Shipments of Citrus Fruits and Vegetables.

Citrus fruits and green vegetables may be forwarded in mixed carloads at the highest rate (for the carload) that is provided for any of the commodities shipped in the car.

1693 Instructions Regarding the Acceptance of Shipping Orders.

The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations herein set forth.

Diversions.

Initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

Quick Service.

Each road participating in the citrus fruit traffic is urged to expedite the movement of shipments in every possible way.

Prohibition of Stops in Transit to Partly Unload.

Rates named herein apply only on full carload shipments, from one consignor at initial point of shipment, consigned and to be delivered to one consignee at one destination. Less than full carloads will be subject to the less than carload rates, but not to exceed charges for full carload. Cars will not be allowed to be stopped in transit at any point intermediate to complete loading or to partly unload.

Protection of Notations Made by Initial Lines on Way Bills.

When initial carrier makes notation on way bills giving connecting carriers specific instructions pertaining to the freight, all connecting lines following such instructions are protected by bond in the hands of initial carrier.

1694 (Endorsed:) D'f't S. P. Co.'s Exh. 2 Approved. G. W. Luce general freight agent S. P. Co. No. 1039 U. S. circuit court southern district of California southern division. Defendant So. Pac. Co. Exhibit No. 2. Alton M. Cates special examiner and commissioner. Filed Apr. 11 1904 Wm. M. Van Dyke clerk.

1695 Supersedes East-bound Special Tariff No. S. R. 297.

I. C. C. No. 233. Supersedes I. C. C. No. 190.

No. S. R. 344.

Trans-continental Freight Bureau.

East-bound Special Tariff.

Effective December 1, 1902.

This tariff contains the individual rates, rules and regulations of each company, respectively, and is subject to change by each company without the consent of any other company whose name appears hereon.

Applying via

Southern Pacific Company (Pacific System),

Via Ogden, Utah, Mojave, Cal., or El Paso, Tex.

Union Pacific railroad, Santa Fe Pacific railroad,
Rio Grande Western railway, Texas & Pacific railway,
"El Paso-Rock Island route,"
Southern Pacific Company (Atlantic system),
Santa Fe system (via Bakersfield or Barstow, Cal.)
Southern California railway. Santa Fe Pacific railroad,
San Francisco & San Joaquin R'y,
Atchison, Topeka & Santa Fe R'y,

In connection with roads named on page 2 hereof.

Naming Rates on

Citrus fruits, carloads (min. wt. 26,000 lbs.),

from

The following "Pacific Coast terminals," viz:

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), Richmond, San Jose, Los Angeles, San Diego, and National City, Cal., Portland, East Portland and Albina, Ore., and "In-
1696 termediate points" (as shown in circular No. 16–B (I. C. C. 218), amendments thereto or reissues thereof.)

to

Points located on or east of the western boundary of the Missouri River common points territory and points east thereof on roads with which an agreed basis of divisions is in force, within the following territories:

New York, Boston and common points; Pittsburgh, Buffalo and common points; Cincinnati, Detroit and common points; Chicago

and common points; Mississippi River common points; Missouri River common points (as described more fully on pages 2 to 26, inclusive of east-bound tariff No. 3-D (I. C. C. 195), amendments thereto or superseding issues thereof.)

The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations hereinafter set forth.

The rates named in this tariff will be subject to the general rules and regulations governing the application of rates published in easts bound tariff No. 3-D, which took effect July 1, 1902, amendments thereto or reissues thereof.

Wm. Sproule, freight traffic —
So. Pac. Co. (Pac. Sys. and Oregon lines),
San Francisco, Cal.
L. J. Spence, general eastern freight agent,
So. Pac. Co. New York, N. Y.
G. W. Luce, general freight agent,
So. Pac. Co. (Pacific system), San Francisco, Cal.
1697 W. E. Coman, general freight agent,
So. Pac. Co.'s lines in Oregon,
Portland, Ore.
G. A. Parkyns, asst. gen. freight agent,
So. Pac. Co. (Pacific system),
Los Angeles, Cal.
H. A. Jones, freight traffic manager,
So. Pac. Co. (Atl. sys.) Houston, Tex.
W. H. Masters, asst. traffic manager,
So. Pac. Co. (Atlantic system)
New Orleans, La.
C. K. Dunlap, general freight agent,
So. Pac. Co. (Atl. sys.) Houston, Tex.
A. S. Hughes, general traffic manager
D. & R. G. R. R. and R. G. W. R'y,
Denver, Colo.
S. H. Babcock, asst. gen. traffic manager,
D. & R. G. R. R. and R. G. W. R'y,
Salt Lake City, Utah.
Fred Wild, Jr. general freight agent,
D. & R. G. R. R. and R. G. W. R'y
Denver, Colo.
H. Gower, asst. freight traffic manager,
C. R. I. & P. R'y, Chicago, Ill.
H. H. Embry, general freight agent,
C. R. I. & P. R'y (western district),
Topeka, Kas.

A. N. Brown, general freight agent,
E. P. & N. E. R. R. and E. P. & N. E. Ry.,
El Paso, Tex.
1698 W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.
W. A. Bissell, asst. traffic manager,
Santa Fe system,
San Francisco, Cal.
J. E. Gorman, general freight agent,
A. T. & S. F. R'y Topeka, Kas.
E. Chambers, general freight agent,
A. T. & S. F. R'y (Coast lines),
Los Angeles, Cal.
E. L. Sargent, general freight agent,
Texas & Pacific R'y, Dallas, Tex.
J. A. Monroe, freight traffic manager,
Union Pacific R. R., Omaha, Neb.
E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal., November 15, 1902.
Issued by R. H. Countiss, agent, 49 Second street, San Francisco, Cal.
Sent to I. C. C. 11–17–1902. (Auth. 840.)

The through rates provided herein will apply in connection with the following named roads the traffic officials of which will certify their concurrence therein to the Interstate Commerce Commission:

Western Roads.

Atchison, Topeka & Santa Fe R'y
Burlington & Missouri River R. R. in Nebraska.
Cane Belt R. R.
Chicago & Alton R'y.
Chicago & North-western R'y.
Chicago, Burlington & Kansas City R. R.
Chicago, Burlington & Quincy R'y.
Chicago Great Western R'y.
1699 Chicago, Milwaukee & St. Paul R'y.
Chicago, Peoria & St. Louis R'y of Illinois.
Chicago, Rock Island & El Paso R'y.
Chicago, Rock Island & Mexico R'y.
Chicago, Rock Island & Pacific R'y.
Chicago, Rock Island & Texas R'y.
Chicago, St. Paul, Minneapolis & Omaha R'y.
Choctaw Oklahoma & Gulf R. R.
Choctaw, Oklahoma & Texas R'y.
Colorado & Southern R'y.
Colorado Midland R'y.

Denver & Rio Grande R. R.
El Paso & Northeastern R. R.
El Paso & Northeastern R'y.
El Paso & Rock Island R'y.
Frisco system.
Fort Worth & Denver City R'y.
Ft. Worth & Rio Grande R'y.
Galveston, Harrisburg & San Antonio R'y.
Galveston, Houston & Northern R'y.
Gulf, Beaumont & Great Northern R'y.
Gulf, Beaumont & Kansas City R'y.
Gulf, Colorado & Santa Fe R'y.
Hannibal & St. Joseph R. R.
Houston, East & West Texas R'y.
Houston & Texas Central R. R.
Illinois Central R. R.
International & Great Northern R. R.
Iowa Central R'y.
Kansas City, St. Joseph & Council Bluffs R. R.
Kansas City, Clinton & Springfield R'y.
Kansas City Southern R'y.
1700 Kansas City & Northern Connecting R. R.
Kansas City & Omaha R'y.
Keokuk & Western R. R.
Leavenworth & Western R. R.
Leavenworth & Topeka R'y.
Los Angeles Terminal R'y.
Minneapolis & St. Louis R. R.
Missouri Pacific R'y.
Missouri, Kansas & Texas R'y.
National City & Otay R'y.
New York, Texas & Mexican R'y.
Omaha, Kansas City & Eastern R. R.
Omaha & St. Louis R. R.
Pecos system.
Rio Grande Western R'y.
Rock Island & Peoria R'y.
St. Joseph & Grand Island R'y.
St. Louis, Iron Mountain & Southern R'y.
St. Louis, Keokuk & North-Western R. R.
St. Louis Southwestern R'y system.
San Antonio & Aransas Pass R'y.
San Diego, Cuyamaca & Eastern R'y.
San Diego, Pacific Beach & La Jolla R'y.
Santa Fe system (Coast lines.)
Southern Kansas R'y of Texas.
Southern Pacific Co. (Atlantic system.)
Southern Pacific Co. (Pacific system.)
Texas Central R. R.

Texas Midland R. R.
Texas & New Orleans R. R.
Texas & Pacific R'y.
Union Pacific R'y.
Wabash R. R.
Weatherford Mineral Wells & N. W. R'y.
Wisconsin Central R'y.

1701 Central Freight Association Territory.

Ann Arbor R. R.
Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R. R.
Bessemer & Lake Erie R. R.
Buffalo & Southwestern R. R.
Chesapeake & Ohio R'y.
Chicago & Eastern Illinois R. R.
Chicago & Erie R. R.
Chicago, Indianapolis & Louisville R'y.
Chicago, Kalamazoo & Saginaw R'y.
Chicago, Peoria & St. Louis R'y of Illinois.
Cincinnati, Hamilton & Dayton R'y.
Cincinnati Northern R. R.
Cincinnati & Muskingum Valley R. R.
Cleveland & Marietta R'y.
Cleveland, Cincinnati, Chicago & St. Louis R'y.
Cleveland, Lorain & Wheeling R'y.
Cleveland Terminal & Valley R. R.
Columbus, Sandusky & Hocking R. R.
Detroit Southern R. R.
Elgin, Joliet & Eastern R'y.
Ft. Wayne, Cincinnati & Louisville R. R.
Grand Rapids & Indiana R'y.
Grand Trunk Railway system:
Cincinnati, Saginaw & Mackinaw R. R.
Detroit, Grand Haven & Milwaukee R'y.
Grand Trunk R'y.
Grand Trunk Western R'y.
Toledo, Saginaw & Muskegon R'y.
Hocking Valley R'y.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Indiana, Decatur & Western R'y.
Lake Erie Alliance & Wheeling R. R.
1702 Lake Erie & Western R. R.
Lake Shore & Michigan Southern R'y.
Louisville, Henderson & St. Louis R'y.
Louisville & Nashville R. R.
Marietta, Columbus & Cleveland R. R.

Michigan Central R. R.
New York, Chicago & St. Louis R. R.
New York, Pennsylvania & Ohio R. R.
Norfolk & Western R'y.
Northern Ohio R'y.
Ohio Central lines.
Penna. lines west of Pittsburgh, N W sys.
Penna. lines west of Pittsburgh, S W sys.
Pennsylvania R. R.
Pere Marquette R. R.
Pittsburgh & Lake Erie R. R.
Pittsburgh & Western R'y.
Pittsburgh, Lisbon & Western R. R.
Southern R'y.
Toledo, Peoria & Western R'y.
Toledo, St. Louis & Western R. R.
Vandalia line.
Wabash R. R.
Wheeling & Lake Erie R. R.

Trunk Line Territory.

Baltimore & Ohio R. R.
Canadian Pacific R'y.
Central New England R'y.
Central R. R. of New Jersey.
Central Vermont R'y.
Chesapeake & Ohio R'y.
Also in connection with
Merchants & Miners Transportation Co.
Old Dominion Steamship Co.
1703 Cornwall & Lebanon R. R.
Delaware & Hudson Co.
Delaware, Lackawanna & Western R. R.
Erie & Wyoming Valley R. R.
Erie railroad.
Grand Trunk R'y.
Lehigh & Hudson River R'y.
Lehigh & New England R. R.
Lehigh Valley R. R.
Maryland & Pennsylvania R. R.
Monongahela River R. R.
New Jersey & New York R. R.
New York & Greenwood Lake R'y.
New York Susquehanna & Western R. R.
New York Central & Hudson River R. R.
New York, Ontario & Western R'y.
Norfolk & Western R'y.
Pennsylvania R. R.

Pennsylvania & Northwestern R. R.
Philadelphia & Reading R'y.
Richmond, Fredericksburg & Potomac R. R.
Rome, Watertown & Ogdensburg R. R.
Wallkill Valley R. R.
West Shore R. R.
West Virginia & Pittsburgh R. R.
Williamsport & North Branch R. R.

New England Roads.

Boston & Albany R. R.
Boston & Maine R. R.
Central New England R'y.
Central Vermont R'y.
Grand Trunk R'y.
Maine Central R. R.
New York, New Haven & Hartford R. R.
Rutland R. R.

1704 Southeastern Common Points.

(For application of rates to southeastern common points, see page 19 of East-Bound Tariff No. 3-D.)

Alabama Midland R'y.
Atlanta & West Point R. R.
Atlantic Coast Line R. R.
Brunswick & Western R. R.
Cape Fear & Yadkin Valley R'y.
Central of Georgia R'y.
Charleston & Savannah R'y.
Charleston & Western Carolina R'y.
Columbia, Newberry & Laurens R. R.
Georgia R. R.
Georgia Southern & Florida R'y.
Merchants & Miners Transportation Co.
Norfolk & Western R'y.
Old Dominion Steamship Co.
Plant system.
Savannah, Florida & Western R'y Co.
Seaboard Air Line.
Southern railway.
Western & Atlantic railroad.
Western Railway Co. of Alabama.
Wilmington & Weldon R. R.

Also

Illinois Central R. R.
Kansas City, Memphis & Birmingham R. R.
Louisville & Nashville R. R.

Mobile & Ohio R. R.
Nashville, Chattanooga & St. Louis R'y.
Queen & Crescent route:
Alabama & Vicksburg R'y.
Concinnati, New Orleans & Texas Pacific R'y.
New Orleans, & North-Eastern R. R.
Alabama Great Southern R. R.

1705 Oranges, lemons, and grape fruit, in packages, or in cars having fixed or transient crates for same, O. R. weather, decay, shortage and delay, prepaid or guaranteed, at estimated weights shown below in carloads; minimum weight, 26,000 lbs.

Estimated Weights.

Oranges—72 pounds per box, when in standard size boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where oranges are packed, 11½ by 11½ by 24 inches).

Lemons—84 pounds per box of standard size, outside measurement 11 by 14½ by 27 inches.

Grape fruit—68 pounds per box, when in standard size orange boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where fruit is packed, 11½ by 11½ by 24 inches).

If boxes of irregular sizes are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.

Oranges, Lemons, and Grape Fruit, in Straight or Mixed Carloads.

From—	To—	Rate in cents per 100 lbs.
San Francisco, Sacramento, Marysville, Stockton, Richmond, San Jose, Oakland, (16th St.), Los Angeles, San Diego, National City, Cal., Portland, East Portland, Albina, Ore., and "intermediate points," as shown in circular No. 16-B (I. C. C. 218), amendments thereto or re-issues thereof.	* Missouri River common points. * Mississippi River common points. * Chicago and common points. * Cincinnati, Detroit and common points. * Pittsburgh, Buffalo and common points. * New York, Boston and common points.	x 125

1706 Winter Relief Rate

on

Lemons in Straight Carloads.

This rate will be in effect December 1st to April 30th.

From—	To—	Rate in cents per 100 lbs.
San Francisco, Sacramento, Marysville, Stockton, Richmond, San Jose, Oakland (16th St.), Los Angeles, San Diego, National City, Cal., Portland, East Portland, Albina, Ore., and "intermediate points," as shown in circular No. 16-B (I. C. C. 218) amendments thereto or re-issues thereof.	* Colorado common points. * Missouri River common points. * Mississippi River common points. * Chicago and common points. * Cincinnati, Detroit and common points. * Pittsburgh, Buffalo and common points. * New York, Boston and common points.	100

* As described on pages 2 to 26, inclusive, of east-bound tariff No. 3-D (I. C. C. No. 195), amendments thereto or superseding issues thereof.

Rate named herein does not include charge for icing and care of refrigeration of the fruit in transit, which charge is additional to rate herein named.

x Rate named will also apply on the citrus fruits named below:

"Citrus fruits" are the fruits of trees such as the orange, lemon, citron, etc., whose leaves do not fall in autumn. The principal "citrus fruits" are oranges, lemons, limes, mandirines, tangerins, citrons and grape fruits.

The rates named above will also apply:—

Via Southern Pacific Co. only:

From stations on the Ventura branch of the Southern Pacific Company (Pacific system), including points on Montalvo extension, viz: Oxnard, Somis, Cal., and points between; also from
1707 stations on the Ojai Valley branch, viz: Ventura Junction to Nordhoff, Cal., inclusive. (Will not apply in connection with Missouri, Kansas & Texas R'y.)

Via Santa Fe system only:

From all points on the National City & Otay railway, San Diego, Pacific Beach & La Jolla railway and San Diego, Cuyamaca & Eastern railway.

From points on the Southern California R'y south of Aliso, Cal.

Via Southern Pacific Co. or Santa Fe system:

(Winter Relief Rate on Lemons Will Not Apply to Colorado Common Points.)

From stations on the Oroville branch of the Southern Pacific Co., when routed via Ogden, Utah, or when routed via Mojave, Cal., in connection with Santa Fe system. (Will not apply in connection with Missouri, Kansas & Texas R'y.)

From all points on the Los Angeles Terminal railway.

Mixed Carload Shipments of Citrus and Deciduous Fruits.

Citrus and deciduous fruits may be forwarded in mixed carload lots, at the higher carload rate applying upon either commodity.

Mixed Carload Shipments of Citrus Fruits and Vegetables.

Citrus fruits and green vegetables may be forwarded in mixed carloads at the highest rate (for the carload) that is provided for any of the commodities shipped in the car.

Instructions Regarding the Acceptance of Shipping Orders.

The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations herein set forth.

1708 Diversions.

Initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

Quick Service.

Each road participating in the citrus fruit traffic is urged to expedite the movement of shipments in every possible way.

Prohibition of Stops in Transit to Partly Unload.

Rates named herein apply only on full carload shipments, from one consignor at initial point of shipment, consigned and to be delivered to one consignee at one destination. Less than full carloads will be subject to the less than carload rates, but not to exceed charges for full carload. Cars will not be allowed to be stopped in transit at any point intermediate to complete loading or to partly unload.

Protection of Notations Made by Initial Lines on Way Bills.

When initial carrier makes notation on way bills giving connecting carriers specific instructions pertaining to the freight, all connecting lines following such instructions are protected by bond in the hands of initial carrier.

(Endorsed:) D'f't Santa Fe's Exh. 1 T J N Desk "Santa Fe System" tariff No. 5930–A cancels system No. 5930 P. H. Goodwin, G. F. A., G. C. & S. F. Ry. Galveston, Tex. F. C. Maegly A. G. F. A., A. T. & S. F. Ry. Topeka, Kansas. 500 November 29, 1902.
1709 No. 1039 U. S. circuit court, southern district of California. southern division. Defendant's A. T. & S. F. Ry. Exhibit 1 Alton M. Cates special examiner and commissioner. Filed Apr. 11 1904 Wm. M. Van Dyke clerk.

1710 Supersedes East-bound Tariff No. S. R. 267 (and Supplements Thereto); also Supersedes Circular No. 21.

I. C. C. No. 190. Supersedes I. C. C. No. 169.

No. S. R. 297.

Trans-continental Freight Bureau.

East-bound Special Tariff.

Effective January 21, 1902.

This tariff contains the individual rates, rules and regulations of each company, respectively, and is subject to change by each company without the consent of any other company whose name appears hereon.

Applying via

Southern Pacific Company (Pacific System),

Via Ogden, Utah, Mojave, Cal., of El Paso, Tex.

Union Pacific railroad, Santa Fe Pacific railroad,
Rio Grande Western railway, Texas & Pacific railway,
Southern Pacific Company (Atlantic system),
Santa Fe system (via Bakersfield or Barstow, Cal.)
Southern California railway, Santa Fe Pacific railroad,
San Francisco & San Joaquin Valley R'y,
Atchison, Topeka & Santa Fe R'y,

In connection with roads named on page 2 hereof.

Naming Rates on

Citrus fruits, carloads (min. wt. 26,000 lbs.),

from

The following "Pacific Coast terminals," viz:

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), Point Richmond (via Santa Fe system only), San Jose, Los Angeles, San Diego, and National City, Cal., Portland, East Portland and Albina, Ore., and "Intermediate points" (as shown
1711 in circular No. 16–A, amendments thereto or reissues thereof)

to

Points located on or east of the western boundary of the Missouri River common points territory and points east thereof on roads with which an agreed basis of division is in force, within the following territories:

New York, Boston and common points; Pittsburgh, Buffalo and common points; Cincinnati, Detroit and common points; Chicago and common points; Mississippi River common points; Missouri River common points (as described more fully on pages 2 to 9, inclusive, of east-bound tariff No. 3–C, amendments thereto or superseding issues thereof).

In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee.

The rates named in this tariff will be subject to the general rules and regulations governing the application of rates published in eastbound tariff No. 3–C, which took effect January 18, 1900, amendments thereto or reissues thereof.

Wm. Sproule, freight traffic manager,
So. Pac. Co. (Pacific system and Oregon lines),
San Francisco, Cal.

C. H. Markham, asst. frt. traffic manager,
So. Pac. Co. (Pacific system and Oregon lines)
San Francisco, Cal.

E. Hawley, asst. general traffic manager,
So. Pac. Co., New York, N. Y.

G. W. Luce, general freight agent,
So. Pac. Co. (Pacific system), San Francisco, Cal.

1712 G. A. Parkyns, asst. gen. freight agent,
So. Pac. Co. (Pacific system), Los Angeles, Cal.

H. A. Jones, freight traffic manager,
So. Pac. Co. (Atlantic system), Houston, Tex.

W. H. Masters, asst. traffic manager,
So. Pac. Co. (Atlantic system), New Orleans, La.

A. S. Hughes, general traffic manager,
Rio Grande Western R'y, Denver, Colo.

S. H. Babcock, asst. gen. traffic manager,
Rio Grande Western R'y, Salt Lake City, Utah.

Fred Wild, Jr., general freight agent,
Rio Grande Western R'y, Denver, Colo.,

W. B. Biddle, freight traffic manager,
Santa Fe system, Chicago, Ill.

W. A. Bissell, asst. traffic manager,
Santa Fe system, San Francisco, Cal.

J. E. Gorman, general freight agent,
A. T. & S. F. R'y, Topeka Kas.

E. Chambers, general freight agent,
Santa Fe Pacific R. R., S. F. & S. J. V. R'y and So. Cal. R'y
Los Angeles, Cal.

E. L. Sargent, general freight agent,
Texas & Pacific R'y, Dallas Tex.

J. A. Munroe, freight traffic manager,
Union Pacific R. R., Omaha, Neb.

E. H. Wood, general freight agent,
Union Pacific R. R., Omaha, Neb.

San Francisco, Cal., January 9, 1902.

Issued by R. H. Countiss, agent, 49 Second street, San Francisco, Cal.

Sent to I. C. C. 1–10–1902. (Auth. 745.)

The through rates provided herein will apply in connectio
with the following named roads the traffic officials of whic
1713 will certify their concurrence therein to the Interstate Com
merce Commission:

Western Roads.

Atchison, Topeka & Santa Fe R'y.
Austin & Northwestern R. R.
Burlington & Missouri River R. R. in Nebraska.
Burlington, Cedar Rapids & Northern R'y.
Cane Belt R. R.
Chicago & Alton R'y.
Chicago & North-Western R'y.
Chicago, Burlington & Kansas City R'y.
Chicago, Burlington & Quincy R. R.
Chicago Great Western R'y.
Chicago, Milwaukee & St. Paul R'y.
Chicago, Peoria & St. Louis R'y.
Chicago, Rock Island & Pacific R'y.
Chicago, Rock Island & Texas R'y.
Chicago, St. Paul, Minneapolis & Omaha R'y.
Choctaw Northern R. R.
Choctaw Oklahoma & Gulf R. R.
Colorado & Southern R'y.
Colorado Midland R'y.
Denver & Rio Grande R. R.
"Frisco system."
Ft. Worth & New Orleans R'y.
Ft. Worth & Rio Grande R'y.
Galveston, Harrisburg & San Antonio R'y.
Galveston, Houston & Northern R'y.
Great Northern R'y.
Gulf, Beaumont & Great Northern R'y.
Gulf, Beaumont & Kansas City R'y.
Gulf, Colorado & Santa Fe R'y.
1714 Hannibal & St. Joseph R. R.
Houston, East & West Texas R'y.
Houston & Shreveport R. R.
Houston & Texas Central R. R.
Illinois Central R. R.
International & Great Northern R. R.
Iowa Central R'y.
Kansas City, St. Joseph & Council Bluffs R. R.
Kansas City, Clinton & Springfield R'y.
Kansas City Southern R'y.
Kansas City & Northern Connecting R. R.
Kansas City & Omaha R'y.
Keokuk & Western R. R.

Leavenworth & Topeka R'y.
Los Angeles Terminal R'y.
Minneapolis & St. Louis R. R.
Missouri Pacific R'y.
Missouri, Kansas & Texas R'y.
National City & Otay R'y.
New York, Texas & Mexican R'y.
Omaha, Kansas City & Eastern R. R.
Omaha & St. Louis R. R.
Pecos system.
Rio Grande Western R'y.
Rock Island & Peoria R'y.
St. Joseph & Grand Island R'y.
St. Louis, Iron Mountain & Southern R'y.
St. Louis, Keokuk & North-Western R. R.
St. Louis Southwestern R'y system.
San Antonio & Aransas Pass R'y.
San Diego, Cuyamaca & Eastern R'y.
San Diego, Pacific Beach & La Jolla R'y.
1715 San Francisco & San Joaquin Valley R'y.
Santa Fe Pacific R. R.
Sherman, Shreveport & Southern R'y.
Sioux City & Pacific R. R.
Southern California R'y.
Southern Kansas R'y of Texas.
Southern Pacific Co. (Atlantic system).
Southern PacificCo. (Pacific system).
Texas Central R. R.
Texas Midland R. R.
Texas Trunk R. R.
Texas & New Orleans R. R.
Texas & Pacific R'y.
Tyler Southeastern R'y.
Union Pacific R. R.
Wabash R. R.
Waco & Northwestern R'y.
Weatherford Mineral Wells & N. W. R'y.
Willmar & Sioux Falls R'y.
Wisconsin Central R'y.

Central Freight Association Territory.

Ann Arbor R. R.
Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R. R.
Bessemer & Lake Erie R. R.
Buffalo & Southwestern R. R.
Chesapeake & Ohio R'y.
Chicago & Eastern Illinois R. R.

Chicago & Erie R. R.
Chicago, Indianapolis & Louisville R'y.
Chicago, Kalamazoo & Saginaw R'y.
Chicago, Peoria & St. Louis R'y.
1716 Cincinnati, Hamilton & Dayton R'y.
Cincinnati Northern R. R.
Cincinnati & Muskingum Valley R. R.
Cleveland & Marrietta R'y.
Cleveland, Cincinnati, Chicago & St. Louis R'y.
Cleveland, Lorain & Wheeling R'y.
Cleveland Terminal & Valley R. R.
Columbus, Hocking Valley & Toledo R'y.
Columbus, Sandusky & Hocking R. R.
Detroit Southern R. R.
Elgin, Joilet & Eastern R'y.
Ft. Wayne, Cincinnati & Louisville R. R.
Grand Rapids & Indiana R'y.
Grand Trunk Railway system:
Cincinnati, Saginaw & Mackinaw R. R.
Detroit, Grand Haven & Milwaukee R'y.
Grand Trunk R'y.
Grand Trunk Western R'y.
Toledo, Saginaw & Muskegon R'y.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Indiana, Decatur & Western R'y.
Lake Erie Alliance & Wheeling R. R.
Lake Erie & Western R. R.
Lake Shore & Michigan Southern R'y.
Louisville, Henderson & St. Louis R'y.
Louisville & Nashville R. R.
Marietta, Columbus & Cleveland R. R.
Michigan Central R. R.
New York, Chicago & St. Louis R. R.
New York, Pennsylvania & Ohio R. R.
Norfolk & Western R'y.
1717 Northern Ohio R'y.
Ohio Central lines.
Penna. lines west of Pittsburgh, N W system.
Penna. lines west of Pittsburgh, S W system
Pennsylvania R. R.
Pere Marquette R. R.
Pittsburgh & Lake Erie R. R.
Pittsburgh & Western R'y.
Pittsburgh, Lisbon & Western R'y.
Southern R'y.
Toledo, Peoria & Western R'y.
Toledo, St. Louis & Western R. R.
Vandalia line.

Wabash R. R.
Wheeling & Lake Erie R. R.
Zanesville & Ohio River R'y.

Trunk Line Territory.

Baltimore & Ohio R. R.
Beech Creek R. R.
Canadian Pacific R'y.
Central New England R'y.
Central R. R. of New Jersey.
Central Vermont R'y.
Chesapeake & Ohio R'y.
Also in connection with
Merchants & Miners Transportation Co.
Old Dominion Steamship Co.
Cornwall & Lebanon R. R.
Delaware & Hudson Canal Co.
Delaware, Lackawanna & Western R. R.
Erie & Wyoming Valley R. R.
Erie railroad.
1718 Fall Brook R'y.
Grand Trunk R'y.
Lehigh & Hudson River R'y.
Lehigh & New England R. R.
Lehigh Valley R. R.
Maryland & Pennsylvania R. R.
Monongehela River R. R.
New Jersey & New York R. R.
New York & Greenwood Lake R'y.
New York Susquehanna & Western R. R.
New York Central & Hudson River R. R.
New York, Ontario & Western R'y.
Norfolk & Western R'y.
Pennsylvania R. R.
Pennsylvania & Northwestern R. R.
Philadelphia & Reading R'y.
Richmond, Fredericksburg & Potomac R. R.
Rome, Watertown & Ogdensburg R. R.
Wallkill Valley R. R.
West Shore R. R.
West Virginia & Pittsburgh R. R.
Williamsport & North Branch R. R.

New England Roads.

Boston & Albany R. R.
Boston & Maine R. R.
Central New England R'y.
Central Vermont R'y.

Grand Trunk R'y.
Maine Central R. R. (White Mountain Div.).
Rutland R. R.

Southeastern Common Points.

(For application of rates to southeastern common points,
1719 see page 6 of east-bound tariff No. 3–C.)
Alabama Midland R'y.
Atlanta & West Point R. R.
Atlantic Coast Line R. R.
Brunswick & Western R. R.
Cape Fear & Yadkin Valley R'y.
Central of Georgia R'y.
Charleston & Savannah R'y.
Charleston & Western Carolina R'y.
Columbia, Newberry & Laurens R. R.
Georgia R. R.
Georgia Southern & Florida R'y.
Merchants & Miners Transportation Co.
Norfolk & Western R'y.
Old Dominion Steamship Co.
Plant system.
Savannah, Florida & Western R'y Co.
Seaboard Air Line.
Southern railway.
Western & Atlantic railroad.
Western Railway Co. of Alabama.
Wilmington & Weldon R. R.

Also

Illinois Central R. R.
Kansas City, Memphis & Birmingham R. R.
Louisville & Nashville R. R.
Mobile & Ohio R. R.
Nashville, Chattanooga & St. Louis R'y.
Queen & Crescent route:
Alabama & Vicksburg R'y.
Cincinnati, New Orleans & Texas Pacific R'y.
New Orleans & North-Eastern R. R.
Alabama Great Southern R. R.

1720 Oranges, lemons, and grape fruit, in packages, or in cars having fixed or transient crates for same, O. R. weather, decay, shortage and delay, prepaid or guaranteed, at estimated weights shown below, in carloads, minimum weight, 26,000 lbs.

Estimated Weights.

Oranges—72 pounds per box, when in standard size boxes (*i. e.*, outside measurement 12 inches by 12 inches by 26 inches; cubic space where oranges are packed, 11½ by 11½ by 24 inches).

Lemons—84 pounds per box of standard size, outside measurement 11 by 14½ by 27 inches.

Grape fruit—68 pounds per box, when in standard size orange boxes (*i. e.*, outside measurement, 12 inches by 12 inches by 26 inches; cubic space where fruit is packed, 11½ by 11½ by 24 inches).

If boxes of irregular sizes are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.

From

San Francisco, Sacramento, Marysville, Stockton, Oakland (16th St.), Point Richmond (via Santa Fe system only), San Jose, Los Angeles, San Diego, and National City, Cal., Portland, East Portland and Albina, Ore., and "intermediate points," as shown in circular No. 16-A, amendments thereto or reissues thereof.

To	Rate.
* Missouri River common points..... * Mississippi River common points. ..... * Chicago and common points. ..... * Cincinnati, Detroit and common points..... * Pittsburgh, Buffalo and common points..... * New York, Boston and common points.....	$1.25 per 100 lbs.

*As described on pages 2 to 9, inclusive, of east-bound tariff No. 3-C (I. C. C. No. 144), amendments thereto or superseding
1721 issues thereof.

Rate named herein does not include charge for icing and care of refrigeration of the fruit in transit, which charge is additional to rate herein named.

The rate named herein will also apply on the citrus fruits named below:

"Citrus fruits" are the fruits of trees such as the orange, lemon, citron, etc., whose leaves do not fall in autumn. The principal "citrus fruits" are oranges, lemons, limes, mandarines, tangerins, citrons and grape fruits.

The rate named above will also apply :—

Via Southern Pacific Co. or Santa Fe system :

From all points on the Los Angeles Terminal railway ;

From stations on the Oroville branch of the Southern Pacific Co., when routed via Ogden, Utah, or when routed via Mojave, Cal., in connection with Santa Fe system.

Via Southern Pacific Co. only :

From stations on the Ventura branch of the Southern Pacific Company (Pacific system), including points on Montalvo extension, viz: Oxnard, Somis, Cal., and points between ; also from stations on the Ojai Valley branch, viz: Ventura Junction to Nordhoff, Cal., inclusive.

Via Santa Fe system only :

From all points on the National City & Otay railway, San Diego, Pacific Beach & La Jolla railway and San Diego, Cuyamaca & Eastern railway.

From points on the Southern California R'y south of Aliso, Cal.

Mixed Carload Shipments of Citrus and Deciduous Fruits.

Citrus and deciduous fruits may be forwarded in mixed car-load lots, at the higher carload rate applying upon either com-
1722 modity.

Mixed Carload Shipments of Citrus Fruits and Vegetables.

Citrus fruits and green vegetables may be forwarded in mixed carloads at the highest rate (for the carload) that is provided for any of the commodities shipped in the car.

Instructions Regarding the Acceptance of Shipping Orders.

In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guarantee.

In accordance with this rule, agents will not accept shipping orders or other documents, if routing instructions are shown thereon. Neither will agents accept verbal routing instructions.

Diversions.

Initial carrier will route each car from point of origin to destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein.

Quick service.

Each road participating in the citrus fruit traffic is urged to expedite the movement of shipments in every possible way.

Prohibition of Stops in Transit to Partly Unload.

Rate named herein applies only on full carload shipments, from one consignor at initial point of shipment, consigned and to be delivered to one consignee at one destination. Less than full carloads will be subject to the less than carload rates, but not to exceed
1723 charges for full carload. Cars will not be allowed to be stopped in transit at any point intermediate to complete loading or to partly unload.

Protection of Notations made by Initial Lines on Way Bills.

When initial carrier makes notation on way bills giving connecting carrier specific instructions pertaining to the freight, all connecting lines following such instructions are protected by bond in the hands of initial carrier.

(Endorsed:) D'f't Santa Fe Co.'s Exh. 2 "Santa Fe System" tariff No. 5930 Cancels "Santa Fe System" tariff No. 211–A P. H. Goodwyn, G. F. A., G. C. & S. F. R'y, Galveston, Tex. F. C. Maegly, A. G. F. A., A. T. & S. F. Ry., Topeka, Kas. Topeka, Kan., January 22, 1902. Defendant's A. T. S. F. R'y Exhibit No. 2 Alton M. Cates special examiner and commissioner. No. 1039 U. S. circuit court southern district of California, southern division. Filed Apr. 11 1904 Wm. M. Van Dyke clerk.

1724 In the Circuit Court of the United States in and for the Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, v. THE SOUTHERN PACIFIC RAILROAD COMPANY, The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, Defendants.	In Equity. No. 1039.

The defendants The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company having heretofore, on the hearing before the Interstate Commerce Commission, objected to the reading into this record of the statement of J. C. Stubbs, made in January 1902 in the case or matter entitled "Consolidations and combinations of carriers subject to the act regulating commerce including the method of association known as the community of interest Plan," the offer of said statement before the commission beginning

on page 249 of the record and the argument and reading thereof continuing unto and including a part of page 255, said defendants now make to the court renewal of said objection and ask that said testimony be stricken from the record, for the reason that the extract from the testimony of said Stubbs so given and read before the Interstate Commerce Commission is not pertinent to any finding made by the commission in its decision nor to the issues in this case, and for the further reason that it was a statement made in a different controversy and investigation to which these defendants
1725 were not parties and at which they had no opportunity to cross-examine said Stubbs, and for the further reason that in making such statement said Stubbs was not acting within the scope of his authority or as an agent of any of the defendants and any statement so made by him is not binding upon said defendants and therefore inadmissible in this case.

T. J. NORTON,
Solicitor for the Atchison, Topeka and Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, and the Southern California Railway Company.

(Endorsed:) No. 1039. U. S. circuit court, ninth circuit, southern district of California, southern division. Interstate Commerce Commission, plaintiff, *v.* So. Pac. R. R. Co. *et al.*, defendants. (Original) Objection to testimony. Filed Apr. 25 1904 Wm. M. Van Dyke, clerk. Chas. N. Williams, depaty. T. J. Norton, E. E. Millikin, Paul Burks, 516 Conservative Life building, Los Angeles, Cal. Telephone main 1466. Attorneys for Def't A. T. & S. F.–S. F. P. & S. C. Ry. Co's.

1726 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

Opinion of Court on Demurrer to the Bill.

This suit is brought, under section 16 of the interstate commerce act, to enforce the following orders, entered by the Interstate Commerce Commission, at its office in Washington, D. C., on the 2nd day of June, A. D. 1902:

"THE CONSOLIDATED FORWARDING COMPANY
"*v.*
"THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, "Topeka and Santa Fe Railway Company, The Santa "Fe Pacific Railway Company, and The Southern Cali- "fornia Railway Company. } No. 575.

"THE SOUTHERN CALIFORNIA FRUIT EXCHANGE
"*v.*
"THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, "Topeka and Santa Fe Railway Company, The Santa "Fe Pacific Railway Company, and The Southern Cali- "fornia Railway Company. } No. 576.

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and the commission having, after due investigation, made and filed a report and opinion herein containing its findings of fact and conclusions
1727 thereon, which said report and opinion is hereby referred to and made a part of this order:

"It is ordered and adjudged that the defendants, The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company, be, and they severally are hereby notified and required to wholly cease and desist, from and after the 20th day of June, 1902, from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons, or other citrus fruits from points in southern California to points on and east of the Missouri river and other eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established and published joint or continuous lines or routes between any of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line.

"It is further ordered and adjudged that said defendants, The Southern Pacific Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company, be, and they severally are hereby, notified and required to wholly cease and desist from and after the twentieth day of June, 1902, from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons, and other citrus fruits from points in southern California to points on and east of the Missouri river, for and during all of the time such rate or charge may be lawfully in force, over each and every of the established routes upon which the said rate or charge is in their published joint schedules or tariffs stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes when specified by a shipper for the transportation of his property is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants or either of them, may determine.

1728 "And it is further ordered that a notice embodying this order be sent forthwith to each of said defendants, together with a copy of the report and opinion of the commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce."

The rule against which said orders are directed is declared in the agreement establishing the through routes, as follows:

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving the guarantee. In accordance with this rule, agents will not accept shipping orders or other documents if routing instructions are shown thereon. Neither will agents accept verbal routing instructions."

Section 16 of the act to regulate commerce, provides, among other things, that, in a case of this character—

"The court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; * * * and on such hearing the findings of fact in the report of said commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court on such hearing or on report of any such person or persons, that the lawful order or requirement of said commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said commission and enjoining obedience to the same."

The defendants, other than The Southern Pacific Company, have demurred to the bill specially, on the ground that their connecting

lines in the through routes and tariffs mentioned in said orders are not joined as parties to the suit, while all of the defendants
1729 have demurred generally, and for cause urge, in argument, that the rule referred to in said orders, whereby the right of routing is reserved to the initial carrier, and the practice under said rule, as alleged in the bill, are not illegal.

The demurrers will be disposed of in the order of their statement, and the allegations of the bill bearing directly upon the issue raised by the general demurrer will be particularly noted when that branch of the case is reached.

I.

It is no defense to a wrong-doer, that other participants in the unlawful acts complained of are not joined in the suit. While the connecting companies of the defendants would have been proper, they are not necessary parties, and the objection as to their non-joinder is untenable. I. C. C. *v.* Texas & Pac. Ry. Co., 52 Fed. Rep. 162, affirmed in 162 U. S. 205.

The case of Minnesota *v.* Northern Securities Co., 184 U. S. 199, is essentially different, both in the facts and the relief sought, from the case at bar, and therefore, inapplicable as a precedent here.

II.

The question, and only question, to be decided under the general demurrer is whether or not the rule and practice above stated are unlawful.

All of the parties hereto, complainants and defendants, have devoted considerable portions of their briefs to the question, whether or not said rule of itself, that is, irrespective of the practice thereunder, contravenes said act. In the view, however, which I take of the case, a decision of this question is unnecessary to a ruling upon the demurrer, and, therefore, I shall not review the points and authorities submitted in relation thereto.

While there is no obligation resting upon connecting carriers to establish over their lines through routes and joint tariffs, yet, if such routes and tariffs are established, the carriers cannot
1729 attach thereto a condition which subjects any particular person or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever. Whether or not, in such a case, the whole arrangement for through routes and tariffs, as well as the prejudicial condition, would be void, need not now be determined.

At common law, where the initial carrier undertakes to carry to a destination beyond its own line, the carrier has the right to select the connecting route. This however, is because of the initial carrier's liability beyond its own road. (Atchison, etc., R. Co. *v.* Denver & N. O. R. Co., 110 U. S. 667, 680.) Since, however, in the case at bar, the initial carrier is relieved of that liability, (see report of

commission pages 202 and 206 "*b*"), such carrier is, beyond its own line, really a mere forwarder, and it would seem, as contended by complainant, that, under such circumstances, an application of common law principles would give to the shipper, rather than the initial carrier, the right of routing, in the absence of any agreement to the contrary. I know of no reason, however, why, at common law, the carrier and the shipper, even where the carrier is merely a forwarder beyond its own line, may not agree that the carrier shall select the route.

Conceding, then, the validity at common law of a reservation to the initial carrier of the right of routing, the question remains, whether or not the rule, and practice thereunder, which the defendants, by said orders, are required to cease from enforcing and maintaining, are violative of the interstate commerce act.

Speaking of the Interstate Commerce Commission, the Supreme Court of the United States says:

"It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business.
1731 And with this knowledge it is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the interstate commerce act, shall be secured to all shippers." (I. C. C. *v.* Railway Co. 167 U. S. 506.)

Said act provides, among other things, as follows:

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. * * *" (Vol. 24, U. S. Stat. L., p. 380.)

In paragraph II of the bill it is expressly alleged, that said rule and practice thereunder are violative of said act, in that, among other things, "said rule and practice subject shippers of oranges, lemons, and other citrus fruits from points in southern California to points on and east of the Missouri river, and to other eastern destinations, to an undue or unreasonable prejudice or disadvantage, and also in that it subjects the traffic in oranges, lemons, and other citrus fruits between said points to an undue or unreasonable prejudice or disadvantage and gives the said defendants an undue or unreasonable preference and advantage."

These allegations, although the use of the connective "or" would have subjected them to special exceptions for uncertainty, are in my opinion, allegations of matters of fact. (Texas & Pacific R. R. Co. *v.* I. C. C. 162 U. S. 170.)

1732 On page 46 of the brief of Atchison, Topeka & Santa Fe Railroad Company, filed December the 4th, 1902, is the following statement, which conforms entirely to the authorities above quoted:

"The question as to whether the rule in controversy creates an undue or unreasonable prejudice or an undue or unreasonable preference, is solely a question of fact which must be found as a fact before any order can be made relative to such a matter."

Since, then, the rule, and practice thereunder, in question, are expressly alleged in the bill to work an undue or unreasonable prejudice or disadvantage to the shippers of citrus fruits, it follows, that the orders of the Interstate Commerce Commission forbidding the enforcement and maintenance of said rule and practice are lawful orders.

The conclusion above announced, as to the lawfulness of the orders in controversy, proceeds, of course, upon the theory, that the suit in this court is a proceeding *de novo*, and, that the court is not limited to the issues or evidence before the commission, and this theory seems to be upheld by the following authorities, cited in complainant's brief: I. C. C. *v.* C., N. O. & T. P. Ry. Co., 56 Fed. Rep. 934–935; K. & I. Bridge Co. *v.* L. & N. Ry. Co., 37 Fed. Rep. 614; Shinkle, etc., Co. *v.* L. & N. R. Co., 62 Fed. Rep. 693; and I. C. C. *v.* Ala. Mid. Ry. Co. *et al.*, 168 U. S. 175.

If, however, it be conceded, that the pending suit is not a new proceeding, in the broad sense above indicated, and, that the lawfulness of the orders sought to be enforced must be justified by the findings of the commission, still, I am of opinion, that the commission does find that said rule works an unlawful discrimination. On pages 206 "*d*" and 206 "*e*" of the report of said commission, occurs the following:

"We find nothing in the statute authorizing routes or tariffs of any kind available to shippers only at the option and in the discretion of the carriers, and upon such varying conditions and considerations as they may from day to day or from hour to

1733 hour see proper to be governed by, regardless of the wishes and interests of the shipper.

"Our conclusion is that the practice of the defendant carriers in denying to the shippers the use of their transportation facilities by the established routes is in violation of the statute, and in its application by the defendants to the traffic in question subjects the owners and shippers thereof to undue, unjust, and unreasonable prejudice and disadvantage and gives to the carriers an undue and unreasonable preference and advantage."

The latter part of the paragraph last above quoted is on its face a finding of fact, and the circumstance, that, in the report of the

commission, it is put, irregularly, perhaps, under the head of "conclusions," does not make it any the less a finding of fact. There is nothing to the contrary, so far as I can see, in British Queen Min. Co. *vs.* Baker Silver Min. Co., 139 U. S. 222, or Saltonstall *vs.* Bidwell, 150 U. S. 417, or Lennon *v.* Dickson, 148 U. S. 71, cited at page 7 of the Reply Brief of Southern Pacific Company, filed Feb. 2, 1903.

There is still another view of the pleadings, which, to my mind, shows *prima facie* the lawfulness of said orders.

The commission, at page 199 of its report, finds as follows:

"The routing circular of January 20, 1900, extracts from which appear herein in connection with the findings as to the rule of the carriers reserving to themselves the routing, shows that the orange shipments are forwarded by the initial carrier so as to give certain percentages of the traffic to connecting lines."

The commission further finds, at page 206 "*a*":

"It further appears that a tonnage pool of this traffic as between the connecting carriers not defendants was established and that the defendants so control the routing as to give specific percentages of this tariff to their several connections, thereby fulfilling and giving effect to this unlawful and forbidden arrangement.

1734 "Reason is found in the facts shown for the belief that the suppression of the practice of allowing rebates was only an incidental result of and was not the primary or principal object of the defendant carriers in taking over to themselves control of the routing beyond their respective roads, but that the object was to give effect to the tonnage division before stated between their connections."

Thus it appear from the findings of the commission, that the traffic in question is pooled between the connecting lines of the defendants, and, that the rule which reserves to the initial carrier the right of routing is one of the essential means to this pooling arrangement, and was so intended by the carriers. From these findings, the conclusion, it seems to me, is inevitable, that said rule and practice thereunder are violative of the 5th section of the interstate act, which is as follows:

"SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

It is no justification of said rule and practice, that they are designed to prevent and do prevent unlawful rebates from connecting lines to shippers. Pooling and rebates are both within the prohibitions of the interstate commerce act, and one cannot be employed as a preventive of the other.

The Southern Pacific Company, in its brief filed January the 5th, 1903, referring to the above mentioned findings of the commission as to a tonnage pool between the several connections of the defendants, says:

"This statement, as we have shown, is made wholly outside
1735 of any issue presented by the pleadings, and in its nature appears as an attempt in the 'conclusions' to prejudge a fact not in issue and not embraced in the findings of fact."

This view, I am unable to accept. Paragraph 14 of the petition alleges, among other things, that the rule reserving to the initial carrier the right of routing "was not adopted in good faith by said defendants," etc. The answer of the last named defendant denies this allegation, and avers that said defendant has exercised, and is exercising said right of routing "for the purpose of maintaining lawful rates and preventing violations of the second and third sections of the interstate commerce law," etc. The issue thus raised certainly includes the purpose and use of the right of routing, which are essential elements in fixing the character, that is, the lawfulness or unlawfulness of said right, and, therefore, the findings of the commission, that a tonnage pool exists between defendants' connections, and, that said right of routing is exercised for its advancement, are within the pleadings.

While my convictions as to the matters above passed upon are strong, it may be well to observe, that, were they less pronounced, any substantial doubt should be resolved in favor of the orders sought to be enforced, (Mo. Pac. Ry. Co. *v.* T. & P. Ry. Co., 31 Fed. Rep. 862; I. C. C. *v.* L. & N. R. Co., *et al.*, 102 Fed. Rep., 709; East Tenn., V. & G. Ry. Co., *et al.*, *v.* I. C. C., 99 Fed. Rep. 64; U. S. *v.* Moore, 95 U. S. 763; I. C. C. *v.* Louisville & N. R. Co., 118 Fed. Rep. 613.) and particularly should this rule be observed when the hearing is on demurrer.

It is true, as suggested in the reply brief of Atchison, Topeka & Santa Fe Railroad Company, filed February the 6th, 1903, that the decree of the circuit court of appeals in East Tenn., V. & G. Ry. *v.* I. C. C., *supra*, was reversed, on appeal to the Supreme Court, 181 U. S. 1. That part of the opinion, however, of the circuit court of appeals pertinent to the question now under consideration, and quoted in complainant's brief, filed January 12th, 1903, at
1736 page 41, as follows: "It has been suggested that traffic managers are much better able by reason of their knowledge and experience, to fix rates and to decide what discriminations are justified by the circumstances than the courts. This cannot be conceded so far as it relates to the Interstate Commerce Commission, which, by reason of the experience of its members in this kind of controversy and their great opportunity for full information, is, in a sense an expert tribunal,"—seems not to have been overruled but approved by the Supreme Court, as shown in the following extracts from its opinion:

"To state these issues is at once to demonstrate that their decis-

ion, as a matter of first impression, properly belonged to the commission, since upon that body the law has specially imposed the duty of considering them. Whilst the court has in the discharge of its duty been at times constrained to correct erroneous constructions which have been put by the commission upon the statute, it has steadily refused, because of the fact just stated, to assume to exert its original judgment on the facts, where, under the statute, it was entitled, before approaching the facts, to the aid which must necessarily be afforded by the previous enlightened judgment of the commission upon such subjects. This rule is aptly illustrated by the opinion in Louisville & Nashville Railroad Co. *v.* Behlmer, (1900) 175 U. S. 648, in which case, after pointing out the same error of construction adopted and applied by the commission in the present case, the court declined to undertake an original investigation of the facts, saying (p. 875):

"'If, then, we were to undertake the duty of weighing the evidence in this record, we would be called upon as a matter of original action, to investigate all these serious considerations which were shut out from view by the commission, and were not weighed by the circuit court of appeals because both the commission and the court erroneously construed the statute. But the law attributes *prima facie* effect to the findings of fact made by the commis-
1737 sion, and that body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising.'" (See 181 U. S., pages 27 and 28.)

Demurrers overruled, and defendants allowed 50 days to answer.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, southern district of California, southern division. The Interstate Commerce Commission *vs.* The Southern Pacific Company, *et al.* Opinion of court on demurrer to the bill. Filed Jun 1 1903 Wm. M. Van Dyke, clerk.

1738 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

Opinion of the Court on Final Hearing.

This proceeding, brought under section 16 of the act to regulate commerce, (act Feb. 4, 1887, c. 104, 24 Stat. 384; U. S. Comp. St. 1901, p. 3165), was before me sometime ago on demurrer to the complaint, and the order sought to be enforced is set forth in my opinion, filed on that hearing, and reported in 123 Fed. Rep. 598.

The defendants are initial carriers for the transportation of citrus fruits of southern California to points on and east of the Missouri river. The termini of the Southern Pacific Company are at Ogden and El Paso. The Santa Fe terminal is at Chicago. The points of destination located beyond these termini are reached through connecting carriers.

Pursuant to a previous agreement between the defendants and their eastern connections, effected through correspondence opened by the circular letter of R. H. Countiss, agent, dated Oct. 9, 1899 hereinafter set forth, and sent out at the instance of defendants to their said connections, a joint tariff relating to citrus fruits and fixing a through rate thereon of $1.25 per hundred pounds, from southern California to all points east of the Missouri river, was filed
1739 with the Interstate Commerce Commission, on January the 1st, 1900. Said tariff embodies, among other things, the rule or regulation, whose enforcement the order of the commission forbids, and which was one of the terms of said agreement, and which, with the directions given by defendants to their agents, is as follows:

"In guarantying the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving the guaranty. In accordance with this rule, agents will not accept shipping orders or other documents if routing instructions are shown thereon. Neither will agents accept verbal routing instructions."

Prior to said agreement the keen rivalry existing between defendants' eastern connections led to a far-reaching system of rebates, which was violative of the commerce act, and cannot be too strongly reprobated. Among the participants in this system were certain incorporated companies owning ventilator or refrigerator cars, which were peculiarly adapted to the carriage of citrus fruits, and were hired by the initial carriers because they did not want to own equipment which they could keep in service only a part of the year, while the car companies could use the equipment for other business in other parts of the United States during the lull in the orange trade.

Mr. MORTON, then second vice-president of the Atchison Topeka & Santa Fe Railway Company, after testifying, in effect, that these car companies made arrangements with the connections of his company east of Chicago, and the Southern Pacific connections east of its different termini to get a certain bonus of from ten to forty dollars per car in consideration of the car being routed over the line paying the bonus, a part of the bonus, varying from one-quarter or less to one-half, being usually turned over to the shipper by the car company for the privilege allowed it of routing the shipment; that the connections of the Southern Pacific Company between Ogden and the Missouri river would pay fifteen dollars per car, and the con-
1740 nections between the Missouri river and Chicago would pay ten dollars a car, making twenty-five dollars a car that the Atchison system would have to pay to forego the business; that it

made no difference to the Atchison system whether the cutting in the rate was entirely west of Ogden, or east of Ogden, or at El Paso, or whether the cut was made by the Southern Pacific or by some connection of the Southern Pacific; that, so far as cuts in the rate east of Chicago were concerned, the Atchison system was generally able to secure for oranges moving over its line the same concession made on shipments originating on the Southern Pacific coming east by the Southern Pacific, the Atchison system paying over to the shipper what it received from the connecting line,—proceeds as follows:

"Now, it cost our car company the last year, the year preceeding 1900, quite a large amount of money to meet this competition, and shippers in southern California who did not get the full benefit of this reduction and who had to divide it with Mr. Earl and others, naturally were indignant, and it was in order to prevent that state of affairs solely and for no other reason in the world than to maintain legal rates that we took the routing of this business into our own hands. * * *

"Q. You stated a moment ago, as I understood, that your sole object in assuming control of the routing was to put an end to this rebate and cutting of the legal published tariffs?

"A. Yes. * * *

"A. Certainly. This cutting of rates was all done secretly. There was no publication of tariffs or anything of the kind. It was all in violation of the interstate commerce act.

"Q. And in violation of your published tariff?

"A. And in violation of our published tariff.

"Q. That is what I wanted to get at. Now, you stated that the sole purpose of assuming control of the routing was to do away with the condition that you have described.

"A. That was, I won't *to* say the sole purpose, but the chief
1741 purpose. I might say the sole purpose was to maintain our rates. * * *

"Q. Now, you have stated the purpose of taking into your hands the routing of this citrus business, namely, the stopping of rebates and this secret cutting of the published tariff rates. Was this stopped?

"A. It was.

"Q. Definitely and fully?

"A. Absolutely.

"Q. And in the opinion of the Interstate Commerce Commission the statement is made that it is not clear how that would stop it. Could you illustrate or explain how?

"A. Well, every connection was given to understand that in case they were found offering concessions for this citrus fruit business after the first day of January, 1900, that we would see to it that the business was diverted from their lines; and I remember going so far as to say that if I found anybody cutting our through rates

secretly after the first of January, 1900, that we would not only divert the citrus fruit business from them but we would take away other business; that it was our intention that the published tariff rates should be absolutely maintained. And that was done in the interest of the small shipper and in the interest of not having any discrimination in that business.

"Q. If the initial carrier assumed the routing of the shipment, the connecting carrier would be in no position to bid for the business of a connecting line, would it?

"A. No. When we took the routing of this business into our hands the eastern connection had to do business with us instead of the car company or the shipper."

Mr. W. A. BISSELL, assistant traffic manager of the same company, testifies on this subject as follows:

"Q. Had the business of citrus fruit shipping been leaving you before you established this practice of routing?

1742 "A. Yes sir. We made several endeavors—we tried the costly experiment of being honest in this thing, living up to the law as we understood it and declining to pay rebates; and we lost so much business that we found we had got to do as the Romans did, and, as there seemed to be an idea that the car lines were exempt from the interstate law, which provided imprisonment for railroad men caught doing this thing, we had to arrange to do our business through an outside car line.

"Q. Did you have a car line operating on the Santa Fe?

"A. Well, we had—we didn't have an outside organization until this rebate business came up. We then provided an outside organization and leased our cars to it in order to endeavor to hold the business to us that we thought rightfully belonged to us.

"Q. Well, how long did the business go on, in this way, after the giving of rebates through the car line that you mentioned?

"A. Well, I can't remember without looking up the data. I should say a couple of years, anyway. It may have been longer.

"Q. Well, what was the result of the practice as to being satisfactory or otherwise?

"A. Well, it was very unsatisfactory. It was unsatisfactory to every one; unsatisfactory to the lines between here and Chicago, to the initial lines that originated the business, and also to the connections.

"Q. Did your eastern connections express dissatisfaction about it?

"A. They expressed dissatisfaction to me every time I talked to them; but they were afraid to take any steps that would debar them from this business. They felt that they had to, in order to maintain prestige, carry a certain amount of this business.

"Q. Well, what do you mean by that?

"A. Well, any man that is at the head of the traffic department of a railroad does not want his competitors to get away with all the

orange business, or all of any other kind of business. He
1743 wants his share, even if he does not make any money out of it.

"Q. So that they would take it notwithstanding that the rebates might reduce the profits to little or nothing?

"A. Yes sir.

"Q. Is that what you mean?

"A. They so expressed themselves to me.

"Q. Now, during this two years, you say, that this pulling and hauling of rebates was going on, you were conferring with your eastern connections about this plan to prevent the practice?

"A. Well, I talked it over with them more or less, yes sir.

"Q. Well, what did you finally determine on doing?

"A. Well, we came to the conclusion that we would have to avail ourselves of the right which we believed we possessed of routing this business, and, after having talked the matter over with the other roads interested, we made up our minds to undertake it.

"Q. Have you any correspondence with eastern connections on that subject, or copies of correspondence?

"A. Well, I have some copies of correspondence with our eastern connections which occurred after we had made up our minds what we were going to do. I have no correspondence that took place with them prior to that time. I talked it over with them, but I never wrote to them about it. It was not one of those things that you wanted to write about very much."

Mr. BISSELL further testifies thus:

"Q. What was the object of the Santa Fe companies in preventing this giving of rebates and in putting forth the rule to control the routing?

"A. The object was to be relieved of the dangerous practices that were in vogue, to obtain control of their own equipment or the equipment that was assigned to their lines, over their own road, and to enable them to get compensation for the services that they were performing, without violating the law either directly or indirectly." * * *

1744 "Q. In the opinion of the commission, to which I have referred, there is some question—I am not able to find it right now—about the good faith of your action in assuming control of the routing. I want to put the question to you directly as to whether your purpose was to prevent the giving of rebates and to maintain the lawful published tariff rates, to prevent cutting, as you have stated?

"A. That was our sole object. It had nothing beyond that."

Mr. WILLIAM SPROULE, freight traffic manager of the Southern Pacific Company, testifies as follows:

"Q. Now, permit me to ask you just there. You have spoken here of the competition of the Santa Fe exercised through the medium of its car lines. Do I understand you to say that the car

lines operating on the Santa Fe rails, as was suggested here this afternoon, did pay rebates or make concessions?

"A. Yes sir. They had to or they could not get any share of the business.

"Q. Now then, was the demand made upon you by your eastern connections that you should follow suit with the Santa Fe and make rebates yourself in order to meet that condition and that competition?

"A. They wanted us to join them in meeting the competition as they found it. The competition that our connections found was as much the competition of our other railroad connections, their competitors although our connections, as it was the Santa Fe. But by this time the demoralization had spread so that there was no line handling oranges except the line that would pay these rebates, whether by car milage or other devices; generally, as I have stated car mileage. It can be laid down that every road east of Ogden, El Paso and Albuquerque that was handling oranges was being bled.

"Q. Now, you say that your connections appealed to you to relieve them from that situation?

1745 "A. Yes sir.

"Q. From being compelled to submit to these rebates?

"A. Precisely so.

"Q. The idea was the restoration of a normal tariff, was it not?

"A. The restoration of the tariff that they had joined us in making and out of which they expected to get their stand—their regular percentage of revenue in accordance with the current division sheets. Instead of that, there was a published tariff under which they were supposed to be doing the business and in relation to which the effect of it was that it was another tariff altogether, because there had certain slices to be cut off of it in order to pay these illicit rebates, and the business, consequently, was done by our connecting roads at a reduced figure, lower revenue.

"Q. Now, to relieve that situation and demoralization, the initial carriers undertook to make effective the right of routing the commodity over the connecting lines?

"A. For that reason, and for the reason that we did not want ourself to be drawn into those practices.

"Q. Yes. Now——

"A. And for the further reason, of course, as I have already said, that it complicated our entire relations with connecting lines and impaired our own ability to handle the traffic."

Again Mr. SPROULE says:

"Well, when we undertook to control the routing, we—the agent of the Transcontinental Bureau, Mr. Countiss, was authorized by me to send a letter to every one of our connections to state that a new tariff would be issued on citrus fruits. I should explain, perhaps, that the Transcontinental Bureau is simply a publication office. It

is a clearing house for information. That is to save printers' ink, and is used by all the roads west of the Missouri river that
1746 engage in transcontinental traffic. It is used for that purpose. I authorized him to write a letter to each of our connections, stating that the present tariff would be cancelled and a new one issued, covering citrus fruits. That to this tariff only such roads would be made parties as would enter unto an undertaking to maintain the tariff absolutely, without any refund of any sort by any device, whether to shippers, consignees, connecting roads, or to car lines; and that if the answers were evasive that they would be considered as in the negative. That was the only provision we called for, and the only provision we wanted. I have the correspondence with me at the hotel, copies of it, if it be desired to have it here."

The following is a copy of the Countiss letter:

"SAN FRANCISCO, Oct. 9, 1899.

"Citrus Fruit Tariff.

"DEAR SIR: At a conference held in this city on the 6th and 7th inst., at which the California terminal lines and their direct connections were represented, special consideration was given to citrus-fruit tariff, and in order to effectively promote the observance of the interstate commerce act, thereby conserving the lawful interests of all concerned in the traffic, it was—

"Resolved, That current citrus fruit tariff be canceled November 14th, 1899, and taking effect November 15th, 1899, Agent Countiss published for each of the roads represented at this conference, a tariff in connection with specified routes, comprising roads that give express assurance that they will not deviate from the rates provided therein, directly or indirectly, by any method or device, whether in conjunction with carriers, shippers, consignees or car lines.

"In full assurance of their good faith, each road, in consideration of being made a party to the new tariff, shall give its assent to the cancellation of said tariff so far as its own road is concerned, in event that rates are not absolutely maintained by it as contemplated in foregoing.

1747 "Further, said tariff shall bear the following lawful provision:

"'In guaranteeing rates, the absolute and unqualified right of routing beyond its own terminal, is reserved to initial carrier giving guaranty.'

"May I ask that you promptly advise me as to whether you will give the assurances which, under the above resolution, are requisite to represent to your company in the proposed new tariff, and oblige

"Yours very truly, R. H. COUNTISS, Agent."

Referring to said letter, Mr SPROULE further testifies as follows:

"A. That was sent out by Mr. Countiss. Well, there was a volume of correspondence ensued upon that. Some roads expressed themselves frankly as very glad that we had taken the thing in hand and they gladly complied. Others, who thought it was not a good thing for them, would perhaps try to evade it and give a qualified assurance, which was not accepted, that leading to an interchange of correspondence. Consequently, when the first tariff was issued under this arrangement, there were several roads omitted that afterwards came in, and subsequent issues of the tariff became necessary to include them. Gradually all important roads came in.

"Q. What do you mean by 'coming in'?

"A. They gave their concurrence to that pledge.

"Q. Promised that they would not rebate?

"A. Promised that they would not rebate. That is all the pledge that we asked or desired, and was the only condition for joining in that tariff. And as soon as we put it in effect the abuses as to the rates stopped.

"By Mr. DUNNE:

"Q. So far as you know——

"A. So far as we have any knowledge.

1748 "Q. —have any rebates been paid in the citrus fruit business since the tariff—with this condition that the right of routing should be reserved to carrier?

"A. I have every reason to believe that from January 1st, 1900, until this date there has not been a nickel paid on citrus fruits.

"Q. Nothing of that kind has been brought to your notice?

"A. It has completely stamped it out.

"Q. It is a fact, so far as your observation goes—I think there is some testimony to that effect here—that prior to the enforcement of this routing rule, generally speaking, every carload of citrus fruit paid more or less in rebates?

"A. In 1899, I doubt whether there was any carload of citrus fruit that moved out of southern California without somebody getting a rakeoff on it, although the shipper himself might not get it all."

Mr. SPROULE further testifies thus:

"Q. And it was out of that that you came to exercise specially the right of routing in the matter of citrus fruit, out of those conditions, was it not?

"A. Yes sir.

"Q. That is the necessity which you speak of. If a similar necessity, Mr. Sproule, should arise in respect to other commodities, the railroad company would exercise the right with the same directness, would it not, and the same insistence?

"A. The same—I—we undertook the control of the routing with a good deal of reluctance. We would do it on other commodities

with a good deal of reluctance. But if the same condition developed in any other commodity, so that it were the only remedy left us in order to maintain the tariff and obey the law, I don't see that there would be any other recourse left for us."

Mr. EDWARD CHAMBERS, general freight agent of the Santa Fe lines west of Albuquerque, when testifying as a witness before
1749 the commission, in answer to a question as to why the routing rule was applied to the citrus fruit traffic, said:

"A. Well the main reason was to have the rates maintained."

From these quotations, it will be seen, that there is no controversy but that the routing rule was agreed upon as a means of maintaining the joint tariff rates, and this designed operation of the rule, which, it may be here noted, has been entirely effectual, is strongly emphasized by Mr. Morton, in his sworn statement: "I might say that the sole purpose was to maintain our rates." It is true, that said rule has struck down an unlawful system of rebates. That result, however, which was but incidental, in no way affects the main, and, as will appear later on, pivotal fact in this case, that the defendants and their eastern connections, in entering into the contract and combination for routing by the initial carriers intended thereby to uphold their published rates. Indeed, defendants, in their answers, say (italics mine):

"This defendant further avers that during the years from 1890 up to 1900 a practice of paying rebates had grown up among many of the railroads not entering into the State of California, but which were variously interested in having the oranges, lemons and other citrus fruits shipped from the State of California carried over their lines, or portions thereof, when such lines or any portion thereof could form any portion of a route over which such fruits might be shipped. That such payments of rebates were made either directly or through car-line companies, to the various fruit exchanges, and other large shippers of oranges, lemons, and other citrus fruits, from southern California, and amounted to from $15 to $25 a car, and was paid for the routing of business over the lines of the railroads paying such rebates, thereby diverting the same from other connecting railroads which did not pay rebates; that these rebates were paid either directly by the railroad companies or through private car-line companies, and were received and retained by the fruit exchanges, commission houses,
1750 middlemen, and others who shipped large quantities of oranges, lemons and other citrus fruits, and were not as a rule, as this defendant is informed and believes and charges the fact to be upon its information and belief, received by or of any benefit to the grower of the oranges, lemons and other citrus fruits, or the individual or smaller shippers. That the payment of these rebates was in violation of the provisions of the act of Congress referred to, and in direct violation of the joint tariff rates in force at the time

between the parties thereto, as hereinabove stated, and were made expressly for the sole and only purpose of controlling the routing of oranges, lemons and other citrus fruits from points of connection with the lines of railroad of the defendants named in the petition, or of railroads connecting therewith. * * *

That prior to November 15, 1899, defendants named in the petition and over one hundred and fifty other common carriers of freight and passengers made and entered into a joint tariff agreement known as the 'east-bound joint tariff of class and commodity rates,' which was and did become effective November 15, 1899, whereby through joint tariff rates for the shipment of oranges, lemons and other citrus fruits from southern California points to all points east, north and south of California, by rail, were made, and established to certain common points in the United States to which such traffic is generally shipped, and which joint tariff rates to such common points outside of the State of California were and are less than the sum of the local rates over the different lines of roads from California to such points as the joint tariff rates apply to; and that *to stop the paying of rebates*, as aforesaid, and the demoralization growing out of such practice, and to permit the carriers receiving and loading the traffic referred to, at the initial points of shipment, to make such arrangement with the connecting lines as would enable them to the best advantage to have the fruit cars engaged in this traffic returned over their lines loaded with freight, and in order to enable the initial carrier to
1751 have a prompt and speedy return of such cars from connecting carriers, and a prompt and speedy settlement of all claims for damages between the carriers, or between the carriers and shippers, it was agreed by the several carriers joining in said joint-rate agreement, that as one of the conditions for the shipment of any traffic under the joint tariff rates, to any point outside of the State of California over the initial lines and any other lines connecting with such initial lines, or connecting with lines connecting with such initial lines to which shipments *was* made under such joint tariff agreement, the routing of such shipments should be unqualifiedly given to and reserved by the initial carrier. This rule was made effective on and after January 1, 1900, and pursuant to the agreement between the said common carriers, which were parties to said joint tariff, this defendant has refused and does refuse to accept or receive shipments in carload lots of the citrus fruits referred to, for points on the lines of other carriers, subject to the joint-rate agreement, at the joint tariff rate, except upon the condition and agreement that the initial carrier shall control the routing of the same where there is more than one route, made by two or more lines, to the point of destination.

"This defendant further avers, that the enforcement of this rule and practice at once ended the paying of rebates as aforesaid, *and enabled all the parties to the joint tariff rate agreement to observe the joint tariff rates without any secret cutting or reduction of the same by*

the payment of rebates or otherwise. That on January 18, 1900, a new joint tariff agreement was made between defendants, and the various other common carriers hereinbefore referred to, for the routing of eastbound class and com-odity freight from southern California east, which also required by the agreement making such joint rate as one of the conditions upon which the joint rates should be made, and maintained, that the initial carrier should have the absolute right of routing shipments to points outside of the State of
1752 California when they were reached by two or more carriers joining in the joint-rate tariffs.

"This defendant further avers that the joint tariff rates established as aforesaid and filed with the complainant herein, and referred to in the report and decision of the complainant, attached to its petition, were based and made upon the condition (among others) last above stated. That no agreement was made or entered into between defendants and any other carrier or carriers since November 15, 1899, whereby any joint tariff rates were made, or to be made or maintained, except that they were based upon the condition stated."

Complainant contends, among other things, that said routing provision makes the agreement for said joint tariff, of which it is one of the conditions, a contract or combination for pooling of freights of different and competing railroads, within the meaning of section 5 of the commerce act, which is as follows:

"SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter unto any contract, agreement or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

The question here presented is not whether there was a tonnage pool between the connecting carriers, to which the defendants, although they promoted its ends through the use of the routing rule, were not parties, as was found by the commission (see my opinion herein on demurrer, 123 Fed. Rep. 602), nor whether there was a traffic pool between the defendants, to which the connecting carriers were not parties, which was one of the issues the commission, for lack of satisfactory evidence, retained for further investigation, but
1753 whether or not the routing provision, which the evidence adduced on final hearing shows, and the answers of the defendants admit to have been part of the agreement between the defendants themselves and their eastern connections, and pursuant to which their subsequent joint tariffs were filed with the commission, is itself a contract or combination for the pooling of freights.

The contention of the Southern Pacific Company, that this question is eliminated from the case by the conclusions of the commis-

sion, and, "that the *sole* question * * * is the undue *discrimination vel non* of the alleged routing rule, and nothing else," is, it seems to me, without merit, the commission declares the violation of the commerce act in general terms as follows: "Our conclusion is that the practice of the defendant carriers in denying to the shippers the use of their transportation facilities by the established routes is in violation of the statute," etc. (Report of commission, 206*d*.) Paragraph 11 of the complaint herein, although it gives some specifications, employs other terms, which amount to a general allegation, that said rule is violative of the commerce act, and said defendant, so interpreting the complaint, denies, in paragraph 2 of its answer, the general allegation. The issue thus raised extends to every possible violation of said act, and, in passing upon said issue, the court is not confined to the grounds or reasons assigned by the commission for its conclusion, but might, without going beyond the issue, reach a like or different conclusion upon and for the same or other grounds or reasons. (I. C. C. *vs.* C., N. O. & T. P. Ry. Co., 56 Fed. Rep. 934–935; K. & I. Bridge Co. *vs.* L. & N. R. Co., 37 Fed. Rep. 614; Shinkle, etc. Co., *vs.* L. & N. R. Co., 62 Fed. Rep. 693; I. C. C. *vs.* Ala. Mid. Ry. Co., 168 U. S. 175.)

While it is unquestionably true, as contended by the defendants, that joint tariffs over continuous lines are purely matters of voluntary arrangement between the carriers themselves, about which they may specially contract, yet this power of contracting, of
1754 course, is subject to all the prohibitions of the commerce act, as well those against pooling as those against unjust charges and discriminations.

Section 5 of the commerce act, above quoted, makes it unlawful for the common carriers therein mentioned to enter into any contract, agreement or combination among themselves, first, for the pooling of freights of different and competing railroads; second, to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof. The analysis of said section contended for by the Atchison, Topeka & Santa Fe Railway Company is inadmissible. According to that contention, the second prohibition of said section is not against a contract to divide earnings, but against the actual division of earnings. Such a construction is grammatically impossible. The predicate of the clause "to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof," is all of the section down to and including the word "carriers" in the fourth line; to stop short of the word "carriers" and attempt a connection with the words "to divide," etc., renders the clause incomplete and meaningless. The section, to properly express the prohibition, or, indeed, to have any meaning whatever, must be read as follows: "That it shall be unlawful for any common carrier or carriers * * * to enter into any contract, agreement or combination with any other common carrier or carriers to divide between them," etc. Unless the two clauses are thus connected, the relative "them" in the

latter is without an intelligible antecedent. Another objection to defendant's analysis is, that it loses sight entirely of the obvious purpose of the section, namely: the safe-guarding of competition. The public is in no wise concerned in actual divisions of the earnings of competing railroads, because this does not interfere with their rivalry, but the public is vitally concerned in any contract for the division of future earnings, which destroys or weakens competition. (United States *vs.* Freight Association, 166 U. S. 290)

1755 The meaning which said defendant, attaches to the word "freights" is, in my opinion, also wrong. This meaning is expressed thus: "The word freights in this clause means not the commodity or traffic carried, but the receipts or compensation for the carriage thereof. It cannot, evidently, be given both meanings. If it meant only the commodity carried, it would not include passenger business. If, on the other hand, it was meant to include the receipts, it would also include compensation derived from passenger car riage." The obvious answer to this is, that the word "freights" was not intended to include passenger traffic. Such traffic, in the nature of things, cannot be pooled, because its routing depends ultimately upon the will of the passenger. Again, passenger traffic is included in the prohibition against the conventional division of earnings. And, if the word "freights" were given the meaning defendant claims for it, then the first prohibition of the section, the one against pooling freights, would be entirely useless, since its purpose would be fully accomplished by the prohibition against division of earnings. On the other hand, the pooling of freights, in the sense of distributing the commodities to be transported among the various carriers who are to perform the service, is not reached by a prohibition against the division of earnings.

Defendant quotes several authorities to the effect that the word "freight" means the price to be paid for the carriage of goods. There can be no controversy but that the word, under certain circumstances, is susceptible of that meaning, indeed, both the Century Dictionary and Webster's Dictionary include it among their definitions, although the first definition given by the Century Dictionary is this: "1. The cargo, or any part of the cargo, of a ship; lading; that which is carried by water; in the United States and Canada, in general, anything carried for pay either by water or by land; the lading of a ship, canal-boat, railroad-car, wagon, etc.," and the first definition given by Webster is sub-

1756 stantially the same: "1. That with which any thing is fraught or laden for transportation; lading; cargo, especially of a ship; also of a car on a railway, or the like; as, a freight of cotton; a full freight; freight will be paid for by the ton." Defendant rightfully says, that the meaning to be ascribed to the word in any given case, depends upon the context and illustrates its statement as follows: "Thus, in the 6th section the phrase is in every depot * * * of such carrier where passengers or freight, respectively, are received for transportation.' There the word 'freight' in con

nection with the words 'are received for transportation,' would mean the commodity carried. But in that sense it would not include passengers, and the result would then follow that an agreement for pooling the commodities carried, if 'freight' were so used, would be prohibited, while an agreement for pooling passenger traffic would not be." Said illustration is apt, and the deduction therefrom in harmony with what I have already shown, that passengers cannot, like commodities, be pooled for transportation, and hence passenger traffic is included in the prohibition against division of earnings, not in the prohibition against freight pools.

Defendant further says, in the same connection, "Again, the word 'freight,' when intended to mean the traffic or commodities carried, is comprehensive in its scope, and the singular instead of the plural—'freights'—should be properly used in that connection." This argument is refuted by the commerce act itself, which, in section 7, uses the plural "freights," in the very connection in which defendant asserts the singular, "freight," should be used, said last named section being as follows: "That it shall be unlawful * * * to prevent * * * the carriage of *freights* from being continuous * * *; and no break of bulk shall prevent the carriage of *freights* from being," etc.

It should be borne in mind, that railroads may pool their freights, that is, the commodities they carry, in two ways: First, by distributing the commodities between themselves for carriage; second, by dividing among themselves their aggregate earnings on the commodities carried. Obviously, a prohibition against division of earnings does not include the first class of freight pools, and this explains why section 5 of the commerce law, although adopting some of the features of section 2 of the original Regan bill, as shown in defendant's brief, omits the words "or to pool the freights" which were contained in said section 2, and for the words "by dividing," also contained in said section 2, substitutes the words "or to divide," thus showing, that it is the purpose of the commerce law to prohibit not only earnings pools, but also traffic pools.

1757

Defendant further says, in this connection, at page 110 of said brief: "The word 'pool,' however, used in connection with freights, would be an awkward word to cover a mere division of traffic. In such a case there would be no pool, in the ordinary acceptation of that term." Defendant then proceeds to quote definitions from Webster and the Standard Dictionary, which do not expressly include divisions of traffic.

The Century Dictionary, however, defines the word "pool" thus: "A combination intended by concert of action to make or control changes in market rates." This general definition the same authority specially illustrates thus: "(*b*) A combination of the interests of several otherwise competing parties, such as rival transportation lines, in which all take common ground as regards the public, and distribute the profits of the business among themselves equally, or according to special agreement. In this sense pooling is a system of

reconciling conflicting interests, and of obviating ruinous competition, by which the several competing parties or companies throw their revenue into one common fund, which is then divided or redistributed among the members of the pool on a basis of percentages or proportions previously agreed upon or determined by arbitration."

1758 For judicial approval of this lexicographical exposition, see *In re* Pooling Freights, 115 Fed Rep. 558.

Obviously, the general definition above quoted is broader than the special illustration, and I can conceive of no particular wherein the contract for routing by the initial carrier falls short of said definition. Said contract shows, upon its face, a combination intended by concert of action to make and control changes in market rates, and, besides, defendants' own witnesses testify to such intention in unmistakable language. Said routing contract also fulfils, I think, the spirit, if not the letter of the special illustration, since it may be fairly considered, in the language of said illustration, "A combination of the interests of several otherwise * * * rival transportation lines, in which all take common ground as regards the public, and distribute the profits of the business among themselves * * * according to special agreement," the special agreement being the routing provision, which, by allowing the initial carrier to apportion the freights among its connecting lines, in effect leaves to the arbitrament of such carrier the distribution of profits, and certainly destroys, so far as shippers are concerned, all competition between the connecting lines. Whether this be true or not, however, said routing contract unquestionably comes within the general definition above quoted.

Neither under the general definition nor special illustration is it necessary to a traffic pool, that the contract or agreement should fix the percentages of freights the several railroads are to receive, or that the railroads should know in advance what the percentages will be. It is sufficient in this respect to constitute a pool, if the contract or agreement provides any special means or agency for apportioning the freights, which destroys the rivalry that would otherwise exist between the railroads, and an agreement, by which the apportionment is left "absolutely and unqualifiedly" to the will of the initial carrier accomplishes this end as effectually as though definite percentages were fixed in the contract.

1759 But it is said, that, under the present routing arrangement, the initial carriers look to efficiency of service in apportioning freights, and, there is competition in every respect except rate. The exception is fatal to the argument, because the prohibition of section 5 against pooling freights protects competition in rate as well as in service. Another answer, however, equally conclusive, is, that said section, being in the interests of shippers, the competition it protects is that which reaches and appeals directly to shippers not to arbiters chosen by, and from among the very railroads which occupy common ground as regards the shippers, No pro-

vision for different competition can justify the destruction of that for which the law provides.

There is no escape from the conclusion, it seems to me, that said routing contract is a pool, and the remaining question is whether or not it is such a pool as the commerce act makes unlawful.

Section 5 of said act does not denounce all pools of freights, but only those between different and competing railroads. A joint tariff of through rates between non-competing railroads, forming a continuous line, although an earnings' pool, under the general definition of the word "pool," "a combination intended by concert of action to make or control market rates," is not within the prohibition of said section 5, but, on the contrary, its legality is recognized by the provisions of section 6 of said act. But if there is, in the present case, any fact emphasized and made specially prominent by defendants, it is that fierce rivalry existed between their eastern connections before the routing rule was adopted, and the fact so emphasized, that said connections are competing railroads, together with the other facts already found, brings the routing provision, it seems to me, beyond question, within the express denunciation of section 5.

Not, only, however, is the routing rule a pooling arrangement within the letter of said section, but said rule is against the
1760 spirit of the commerce act. That act prohibits only pools of *competing* railroads, and the sole object of suppressing such pools was to protect the competing relation, and any and every arrangement or device intended to destroy, and which does destroy that relation, whether expressly named in the act or not, contravenes its policy. Since defendants' plan to maintain their rates through the operation of the routing rule necessarily involved the destruction of competition, it is idle to say, that that result was not intended by them. The sole immediate aim of the routing rule was to put the shippers of citrus fruit in a position where their patronage could not possibly be competed for by defendants' eastern connections, and Mr. Morton himself explains the matter briefly, but with great clearness, in the following extracts already quoted from his testimony:

"Q. If the initial carrier assumed the routing of the shipment, the connecting carrier would be in no position to bid for the business of a connecting line, would it?

"A. No. When we took the routing of the business into our hands the eastern connections had to do business with us instead of the car company or the shipper."

But defendants say, that the competition, which the routing rule was intended to suppress was not legitimate business competition, but "rebate competition," and that the commerce act itself denounces such competition. Said rule, however, not only strikes down rebates, but destroys all the competition which section 5 of the commerce act was designed to protect, namely, direct competition both in rate and service for the patronage of shippers. Nor will defendants be heard, in justification of said rule, to say, that its operation has

been more far reaching than they purposed. The destruction of competition was not only inevitable from the rule, but so plainly heralded by its terms, that no gift of prophecy was needed to foretell the result. It could not have been otherwise than obvious to the
1761 commonest understanding. The truth is, as testified to by numerous witnesses, that the chief purpose of defendants in entering into this routing contract was to maintain the joint tariff rates. No doubt the rebate system was a menace, and perhaps the most dangerous one, to said rates, but there were also others, some of them enumerated in section 2 of the commerce act. Established rates could not be maintained while defendants' eastern connections were able, as competitors, to directly approach shippers for their freights, and the routing rule was resorted to for the purpose of destroying that competition, which, as already shown, is the very competition section 5 of the commerce act was designed to safeguard.

Moreover, defendants' contention, that the commerce act denounces "rebate competition," is an erroneous construction of the act. The prohibition against rebates is appropriately placed in section 2 of said act, which forbids the various devices, naming some of them, rebates among others, by which one person may be subjected to a higher rate for contemporaneous and similar service in transportation than another, and rebates are there and thus denounced, not on account of the competition they indicate, but because they are the secret and pernicious instrumentalities of discrimination. The proposition, that the commerce act favors reasonable, or any restraints upon competition, is wholly untenable.

Judge Shiras, in his dissenting opinion in United States *vs.* Trans-Missouri Freight Association, 58 Fed. Rep. 93, says:

"The interstate commerce act did not materially change the rights pertaining to the public. It created certain machinery for the better enforcement and protection of the public interests, but the rights to be protected were already in existence, and the statute in this respect is only declaratory of common law principles. Before the enactment of that statute, railway companies were recognized to be public corporations, charged with the duties and obligations pertaining thereto. As common carriers they were under legal obligation to deal with the public, and to afford equal
1762 facilities to every citizen, and they were only entitled to demand reasonable, and not exorbitant compensation for the services rendered by them. The purpose of the interstate commerce act was not so much to change the legal rights of the common carriers and of the public as it was to compel a change in the practices of the railway companies, and to enforce compliance on their part with the duties and obligations which rested upon them under the principles of the common law. The line of argument followed by the majority seems to assume that the main purpose of the interstate commerce act is to regulate the relations between the competing lines of railway, and to protect the weaker lines of railway and the

capital invested therein from being absorbed by the stronger competitor. That there are evils of this nature of great magnitude is not to be denied, but the interstate commerce act was not enacted for their eradication.

"The primary purpose of that act was to deal with the relation existing between the common carriers and the public, and to enforce the rights of the latter. Experience has shown that railway companies had, in many instances, favored particular localities or particular parties or particular classes of business at the expense of the community at large, and the act was, in the language used by the Supreme Court in Railway Co. *v.* Goodridge, 149 U. S. 680, 13 Sup. Ct. Rep. 970, intended 'to cut up by the roots the entire system of rebates and discriminations in favor of particular localities, special enterprises, or favored corporations, and to put all shippers on an absolute equality.' The uniformity and equality of rates sought to be secured by that act are not between the schedules of rates charged by the several companies, but between the charges actually made by each railway company to its patrons. The act does not require the schedule of rates adopted by one company to conform to that of a rival company. What it does demand of each company is that, in dealing with its customers, it shall make
1763 no unjust discrimination, but shall, for the like service performed under similar circumstances, charge the same rate to all. The act provides that all charges for the transportation of persons or property from State to State shall be reasonable and just, but no standard for ascertaining whether a given rate is reasonable or not is established by the act.

"I fail, therefore, to perceive the force of the argument that the adoption of the interstate commerce act worked a radical change in the relations existing between railway companies and the public, and that one effect thereof was to authorize the former to combine together for the purpose of escaping the effect of competition upon the rates to be charged the public for the services rendered."

Again, at page 95, he says:

"I had always supposed that the enactment of the interstate commerce statute was the result of a popular demand, which insisted upon relief being given to the community as against the methods pursued by the railway companies which, in some particulars at least, were deemed to be inimical to the public interest. Looking at the causes which brought about the enactment of this statute, and the evils at which it was aimed, it does seem clear that it is wholly wrested from its purpose when it is held that it creates numerous radical and effective changes in the public policy of the nation touching competition between railroad companies engaged in interstate commerce. For the better protection of the rights of the public, and to sweep away the system of discriminations in favor of localities, individuals, or classes of business which had come into vogue, the interstate commerce act was intended to introduce radical changes in railway methods, but it never was intended to curtail the rights

of the public and enlarge those of the railway corporations in any substantial particular. The argument of the majority is that, even if it were admitted that under common-law principles all contracts or combinations between public common carriers for the es-
1764 tablishment of rates would be held to be contrary to public policy, nevertheless the enactment of the interstate commerce act revolutionized the law in this particular, and authorized railway companies to enter into combinations for the purpose of establishing reasonable restrictions upon the freedom of interstate commerce.

"Reading that act in the light of the causes leading to its enactment, I cannot find in any of its provisions foundation for the theory that it was intended to confer upon railway companies the right to enter into combinations which, under the principles of the common law, would be illegal, because contrary to public policy."

Concerning this opinion of Judge Shiras, the Supreme Court say: "The whole opinion is a remarkably strong presentation of the views of the learned judge who wrote it." (166 U. S., 338.)

The opinion of the court of appeals written by Judge Sanborn, and concurred in by Judge Thayer, but dissented from by Judge Shiras, in the same case, 58 Fed. Rep. 58, cited by the Southern Pacific Company in its brief, proceeds largely on an asserted distinction between contracts which merely restrict, and those which destroy competition, holding the former, if the restraints are reasonable, legal, the latter illegal.

The court says, at page 69: "The main purpose of contracts of these classes that are thus held illegal is to suppress, not simply to regulate, competition; and, if suppression is not effected, it is because the contracts fail to accomplish their purpose. It is evident that there is a wide difference between such contracts and those the purpose of which is to so regulate competition that it may be fair, open, healthy, and whose restriction upon it is slight, and only that which is necessary to accomplish this purpose. It does not necessarily follow that contracts of the latter class constitute illegal restraints of trade because those of the former classes do."

And at page 70: "It was natural that in the discussion of contracts of these classes the courts should condemn in unmeas-
1765 ured terms the suppression of competition, but in none of these cases were they required to hold, and in none of them did they hold, as we understand the opinions when read in relation to the facts of the cases respectively, that every restriction of competition by contracts of competing dealers or carriers was illegal. These decisions rest upon broader ground—on the ground that the main purpose of the obnoxious contracts was to suppress competition, and that they thus tended to effect an unreasonable and unlawful restraint of trade; they rest on the well-settled rules, and come within the well-defined classes, to which we have above referred."

And at pages 72 and 73: "From a review of these and other authorities, it clearly appears that when the anti-trust act was passed

the rule had become firmly established in the jurisprudence of England and the United States that the validity of contracts restricting competition was to be determined by the reasonableness of the restriction. If the main purpose or natural and inevitable effect of a contract was to sup-ress competition or create a monopoly, it was illegal."

Moreover the opinion of the court clearly implies, although it does not so state in terms, that contracts, illegal upon general principles because they suppress competition, are contrary at least to the spirit of the commerce act, as shown by the following extract quoted from pages 65 and 66: "Contracts between competing corporations, commonly termed 'pooling contracts' to divide their earnings from the transportation of freight in fixed proportions, have long been held void by the courts as against public policy. Such contracts do not simply restrict competition, they tend to destroy it; and if they do not effect that result, it is only because they do not completely accomplish their main purpose. When acting independently, the spur of self-interest drives each corporation to furnish the people with the best accommodations and the safest and most rapid transportation at the lowest profitable rates in order that it may attract larger patronage and gather increased
1766 gain. But under the operation of a pool this incentive to exertion is withdrawn. Each carrier finds it to its interest to enhance the price of carriage, and finds that its profits are not sensibly diminished by furnishing poor facilities for transportation and inexpensive and mean accommodations. In 1887 Congress recognized and adopted this rule of public policy, and by section 5 of 'An act to regulate commerce,' (24 Stat. 379, c. 104; Rev. St. Supp. 529,) prohibited such contracts between common carriers engaged in interstate or international commerce. That act, however prohibited contracts for the pooling of freights of different and competing railroads only; it prohibited contracts that thus destroyed competition; it did not prohibit all contracts that in any way restricted or regulated competition."

In order to determine, however, the authoritative force of any part of the opinion in the case last cited, due regard must be had to the history of the case, which may be epitomized thus: The bill was dismissed by the circuit court, 53 Fed. Rep. 440, and the decree of that court affirmed by the circuit court of appeals for the eighth circuit, 58 Fed. Rep. 58, *supra*, but the decrees of both of these courts were reversed by the Supreme Court, 166 U. S. 290, and in its opinion the Supreme Cpurt rejects the conclusions of the other courts, based on the distinction to which I have already adverted, that the commerce act recognizes the lawfulness of reasonable restraints upon competition, in the following language, partly quoted in the brief of the Atchison, Topeka & Santa Fe Railway Company:

"The first answer to this argument is that, in our opinion, the commerce act does not authorize an agreement of this nature. It may not in terms prohibit, but it is far from conferring either di-

rectly or by implication any authority to make it. If the agreement be legal it does not owe its validity to any provision of the commerce act, and if illegal it is not made so by that act. The fifth section prohibits what is termed 'pooling,' but there is no express
1767 provision in the act prohibiting the maintenance of traffic rates among competing roads by making such an agreement as this, nor is there any provision which permits it. Prior to the passage of the act the companies had sometimes endeavored to regulate competition and to maintain rates by pooling arrangements, and in the act that kind of an arrangement was forbidden. After its passage other devices were resorted to for the purpose of curbing competition and maintaining rates. The general nature of a contract like the one before us is not mentioned in or provided for by the act."

No such situation, it should be borne in mind, was before the court then as is here presented, namely, a traffic pool, or, more specifically a contract for the distribution of freight between different and competing railroads by arbitrary routings of the initial lines, regardless of the wishes of shippers.

Furthermore, the Supreme Court quotes approvingly from Judge Shiras' dissenting opinion in that case, as follows:

"As to the majority of the community living along its line, each railway company has a monopoly of the business demanding transportation as one of its elements. By reason of this fact the action of this corporation in establishing the rates to be charged largely influences the net profit coming to the farmer, the manufacturer and the merchant, from the sale of the products of the farm, the workshop and manufactory, and of the merchandise purchased and resold, and also largely influences the price to be paid by every one who consumes any of the property transported over the line of railway. There is no other line of business carried on in our midst which is so intimately connected with the public as that conducted by the railways of the country. * * * A railway corporation engaged in the transportation of the persons and property of the community is always carrying on a public business which at all times directly affects the public welfare. All contracts or combinations entered into between railway corporations
1768 intended to regulate the rates to be charged the public for the service rendered, must of necessity affect the public interests. By reason of this marked distinction existing between enterprises inherently public in their character and those of a private nature, and further by reason of the difference between private persons and corporations engaged in private pursuits, who owe no direct or primary duty to the public and public corporations created for the express purpose of carrying on public enterprises, and which, in consideration of the public powers exercised in their behalf, are under obligations to carry on the work intrusted to their management primarily in the interest and for the benefit of the community it seems clear to me that the same test is not applicable to both

classes of business and corporations in determining the validity of contracts and combinations entered into by those engaged therein. * * * In the opinion of the court are found citations from the reports of the Interstate Commerce Commission in which are depicted the evils that are occasioned to the railway companies and the public by warfares over rate charges, and the advantages that are gained in many directions by proper conference and concert of action among the competing lines. It may be entirely true that as we proceed in the development of the policy of public control over railway traffic, methods will be devised and put in operation by legislative enactment whereby railway companies and the public may be protected against the evils arising from unrestricted competition and from rate wars which unsettle the business of the community, but I fail to perceive the force of the argument that because railway companies *through their own action cause evils to themselves* and the public by sudden changes or reductions in tariff rates they must be permitted to deprive the community of the benefit of competition in securing reasonable rates for the transportation of the products of the country. Competition, free and unrestricted, is the general rule which governs all the ordinary business pursuits and transactions of life. Evils, as well as
1769 benefits, result therefrom. In the fierce heat of competition the stronger competitor may crush out the weaker; fluctuations in prices may be caused that result in wreck and disaster; yet, balancing the benefits as against the evils, the law of competition remains as a controlling element in the business world. That free and unrestricted competition in the matter of railroad charges may be productive of evils does not militate against the fact that such is the law now governing the subject. No law can be enacted nor system be devised for the control of human affairs that in its enforcement does not produce some evil results, no matter how beneficial its general purpose may be. There are benefits and there are evils which result from the operation of the law of free competition between railway companies. The time may come when the companies will be relieved from the operation of this law, but they cannot, by combination and agreements among themselves, bring about this change. The fact that the provisions of the interstate commerce act may have changed in many respects the conduct of the companies in the carrying on of the public business they are engaged in does not show that it was the intent of Congress in the enactment of that statute, to clothe railway companies with the right to combine together for the purpose of avoiding the effects of competition on the subject of rates." (166 U. S. 290.)

After careful consideration of the subject, I am of opinion, that any contract, agreement or combination between different and competing railroads, whereby the volume or quantity of freights each or any shall receive for transportation is to be determined by or through any conventional means or agency, which was intended to, and does suppress competition either in rate or service or competi-

tion directly addressed to shippers, is a traffic pool, within the meaning of section 5 of the commerce act, and, that the routing contract here in controversy does so apportion freights among the defendants' eastern connections, and is essentially such a pool.

1770 Defendants' contention, that the order in controversy is unlawful, because legislative in its character, is not well taken. The routing rule or regulation, although embodied in the joint tariff, and, therefore, a contractual provision between the common carriers who are parties to said tariff, is also in effect a declaration to the public, that the practice, for which said rule or regulation provides will be followed by the initial carriers, and the order of the commission does nothing more than forbid this unlawful practice, while the injunction prayed for is but the ordinary equitable remedy against a threatened mischief.

In Interstate Commerce Commission *vs.* Railway Company, 167 U. S. 479, cited by defendants in this connection, the court simply held, that the power to prescribe rates for carriage by a common carrier is not an administrative or judicial, but a legislative function, and has not been conferred upon the Interstate Commerce Commission. In the present case, however, the commission does not undertake to prescribe rates or any other rule of action, but simply performs the plain judicial function of directing the defendants to desist from an unlawful practice which they have publicly declared their intention to pursue, and in which they are now engaged. The case last cited, therefore, has no application to the case at bar.

The Supreme Court, however, in a sentence which concludes its opinion and immediately follows a clause quoted from said opinion in defendants' brief, states the law, in terms peculiarly applicable here, as follows: "The legislature may impose a duty, and when imposed it will, if necessary, be enforced by the courts, but, unless a duty has been created either by usage or by contract, or by statute, the courts cannot be called on to give it effect." Express leases 117 U. S. 29, section 5 of the commerce act, by declaring unlawful certain contracts, agreements and combinations therein mentioned, makes it the duty of common carriers to refrain from entering into such contracts, agreements or combinations, and the enforce-

1771 ment of this duty is clearly a judicial function. The Supreme Court has heretofore sanctioned an order somewhat similar to the one here involved. (Can., N. O. & Tex. Pac. Ry. Co. *vs.* Int. Com. Com. 162 U. S. 184:)

With reference to the designed and actual effect of the routing rule upon the practice of rebates, which is strongly urged in behalf of said rule, it is only necessary to quote here from my opinion on the demurrer, 123 Fed. Rep. 602, as follows:

"It is no justification of said rule and practice that they are designed to prevent, and do prevent, unlawful rebates from connecting lines to shippers. Pooling and rebates are both within the prohibitions of the interstate commerce act, and one cannot be employed as a preventive of the other."

On this same line, the defendants also contend, that routing by the initial carrier, besides breaking up the unlawful and vicious practice of rebates, is also to the best interests of the shippers, in that it tends to secure an efficient and advantageous service from the connecting carriers not otherwise obtainable, in expeditious handling of freights, by speedy return of cars, prompt settlement of claims for losses, better results from the use of refrigerator cars, etc. This argument, however forcible it might be if addressed to Congress in support of proposed amendments to the commerce act cannot be effectual with the courts, whose duty it is to administer, not change existing laws.

Defendants' contention, that the order of the commission is broader than its findings and conclusions, cannot be maintained. The order relates only to the routing provision of the joint tariff on citrus fruits, filed by defendants and their eastern connections with the commission, and does not purport to interfere with routing by an initial carrier in any other case.

With reference to defendants' contention, that the complainants before the Interstate Commerce Commission were there with
1772 unclean hands, it is only necessary to say, that, in this court, the commission represents the public at large, and, therefore, no participation by said complainants in the unlawful practice of rebates could bar relief here.

My conclusions on the pooling issue render it unnecessary for me to pass upon any of the other questions which have been raised in the case.

The defendants will be enjoined from disobedience of said order, and complainants' solicitors are requested to prepare and submit a suitable form of decree.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, southern district of California, southern division. The Interstate Commerce Commission *vs.* The Southern Pacific Company *et al.* Opinion of the court on final hearing. Filed Sep. 6 1904 Wm. M. Van Dyke, clerk.

1773 In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railway Company, The Southern California Railway Company.	In Equity.	No. 1039.

Now come defendants and object to the entry of any decree in the above entitled action upon the ground that the Honorable Olin

Wellborn, judge of the United States district court has no jurisdiction or authority to make or enter a judgment therein, for the reason that under the provisions of the act of Congress, February 11th, 1903, the said proceedings could only be heard before three of the circuit judges of the circuit court of the United States for the ninth judicial circuit, and defendants hereby request and pray that this proceeding be assigned for hearing before the circuit judges of the ninth judicial circuit.

W. F. HERRIN,
P. F. DUNNE,
Counsel for Southern Pacific Company.
ROBERT DUNLAP,
T. J. NORTON,
Counsel for Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railway Company, The Southern California Railway Company.

1774 (Endorsed:) Original. No. 1039. Circuit court of the U. S., southern division, so. dist. of California. Interstate Commerce Commission, plaintiff, *vs.* So. Pacific Company, *et al.*, defendant-. Objection to entry of decree. Filed Sep. 20 1904 Wm. M. Van Dyke, clerk. Chas. N. Williams, deputy. J. W. McKinley, rooms 12-16 Rindge bldg., 254 So. Broadway, Los Angeles Cal. attorney for So. Pac. Co.

1775 At a stated term, to wit, the July term, A. D. 1904, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Tuesday the twentieth day of September, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Olin Wellborn, district judge.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

This cause coming on this day for the entry of the decree herein, L. H. Valentine, Esq., United States attorney, and Joseph H. Call, Esq., special assistant United States attorney, appearing as counsel for complainant, and E. E. Millikin, Esq., appearing on behalf of counsel for all of the defendants, now, E. E. Millikin, Esq., on behalf of counsel for all of the defendants, having filed herein and read to the court the objection of all of the defendants in this cause to the entry of any decree in this action upon the ground that the Honorable Olin Wellborn, judge of the United States district court has no jurisdiction or authority to make or enter a judgment therein for the reason that under the provisions of the act of Congress of February 11th, 1903, the said proceedings could only be heard be-

fore three of the circuit judges of the circuit court of the United States for the ninth judicial circuit, and also requesting and praying that this proceeding be assigned for hearing before the circuit judges of the ninth judicial circuit, and said objection having thereupon been by the court denied, and counsel on behalf of all of the
1776 defendants having noted and been allowed an exception to said ruling, and a final decree in this action having thereupon been signed, filed and directed to be entered herein, and E. E. Millikin, Esq., on behalf of counsel for all of the defendants, having moved the court for an order suspending the operation of said decree for twenty days, and Joseph H. Call, Esq., special assistant United States attorney of counsel as aforesaid for the complainant, having objected to the making of said order, and said objection having been overruled by the court, it is now by the court ordered that the operation of the decree in this cause be, and the same hereby is suspended for twenty (20) days.

1777 At a stated term, to wit, the July term, A. D. 1904. of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Friday the seventh day of October, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Olin Wellborn, district judge.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

Now come E. E. Millikin, Esq., of counsel for defendants other than The Southern Pacific Company, and J. W. McKinley, Esq., of counsel for defendant The Southern Pacific Company, and move the court that the operation of the decree entered herein be stayed for ten (10) days in addition to the stay heretofore granted by the court, and Joseph H. Call, Esq., special assistant United States attorney, of counsel for complainant, being present and having been heard in opposition to said order, it is now, by the court ordered that the operation of the decree in this cause be, and the same hereby is suspended until Tuesday, October 18th, 1904, it being understood by and between counsel that defendants will, on Monday October 17th, 1904, move the court for an order suspending the operation of the decree pending an appeal from said decree to the Supreme Court of the United States.

1778 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as The Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
No. 1039. In Equity.

STATE OF CALIFORNIA, City and County of San Francisco, } ss:

W. A. Bissell, being sworn, says: He is and at all the times herein mentioned was assistant traffic manager of The Atchison, Topeka & Santa Fe Railway Company, one of the defendants in the above-entitled cause. Referring to the decree entered in the above-entitled cause by which the defendants are enjoined from enforcing the routing provision now obtaining as to citrus fruit in their joint tariffs, this affiant respectfully says that unless such decree and injunction be suspended and superseded pending the appeal of defendants therefrom, the said defendant will be subjected to great and irreparable injury and to a multiplicity of suits.

This affiant avers that the rule and provision contained in these joint tariffs, as to citrus fruit, by which the initial carrier determines the routing of such commodity upon connecting lines, parties to said joint tariff, rests upon the right of the initial carrier, arising by force of law, the commerce act apart, to specify the routing upon a through rate beyond its own terminal. As a common carrier, the said defendant is under a legal duty to
1779 afford transportation upon its own lines and between its own termini; as to ulterior transportation along connecting lines, its legal duty ceases with the delivery of the freight to the given connection. Upon the assumption by the initial carrier of the ulterior transportation under a joint tariff with its connections, it is for such initial carrier to determine what agency it shall engage in the way of a connecting carrier for the transportation of the freight beyond its own terminal to final destination. The arrangement herein by said defendant for through transportation of citrus fruit is a voluntary one, not compellable by law, and as to which the carrier has the option. The joint tariffs with which this cause is concerned and upon which, as the basis, shippers have been accorded through transportation from point of origin to eastern markets for their citrus fruits, contained an express provision reserving the right

of routing unqualifiedly to the initial carrier and such provision was a substantial inducement for the making of the joint tariff and the extension of its advantages to the shipper; and through transportation, as a transaction between the shipper and the initial carrier in respect to this citrus fruit, has been offered and taken on these terms. So far as the action of said defendant under the law is concerned, and so far as its business arrangements and contracts have been made and expressed, it has conducted and routed the transportation of citrus fruits along the lines of the general situation as indicated above.

Fully believing through all the previous history of this case, and believing now in the legal right and the intrinsic justice of its routing policy in respect to citrus fruits, this defendant was led to a strict enforcement of the routing rule in respect to these special commodities by a set of conditions to which recognition is given in the opinion of this court upon the merits. Prior to the enforcement of the routing rule and under a system of through transportation upon a through rate, the integrity and the lawful maintenance of such
1780 rate has been attacked and vitiated by unlawful competition and struggles for business among the connecting lines of the initial carriers. The distribution of the commodities by shippers among the connecting lines was not determined by lawful competition in the price of transportation for such price was a fixed, uniform and published rate, nor was such distribution determined by competition among connecting carriers in the matter of services and facilities. The course of transportation was fixed by secret cutting of the lawful rate—by the offer and acceptance of illegal rebates which grew to such an extent that scarcely a car of citrus fruit was hauled from southern California upon which an unlawful deduction from the regular tariff was not made. This unlawful competition by way of rebates and violation of the commerce act, while at first operating between connecting lines and shippers, settled down into an arrangement between connecting lines and the private car lines and such private car lines, operating with the funds illegally paid them as rebates by the connecting lines, purchased from the shipper the routing of the commodity and thereupon, routed such commodity in accordance with the rebates. The initial lines, under these conditions, were powerless. The connections competed unlawfully for the business. The shipper sold his privilege of distribution among connecting lines and the rebate, as handled by the car lines, routed the commodity. It was to break up this unlawful system and to maintain the rate according to law that the initial carriers insisted upon the routing provision in the joint tariffs. With the control of the routing in their hands, the practice of rebating was extinguished. Thereafter, and under the operation of this routing provision, transportation rates for citrus fruits as fixed by joint tariff and published in conformity with the statute have been maintained in accordance with the policy and letter of the law.

Since the enforcement of the routing rule, the contractual relations between the initial carriers and their connections have been exhibited by the published tariffs. No contract, agreement
1781 or understanding has been made or executed among the connecting carriers in respect to the apportionment among themselves of the tonnage or earnings in citrus fruit from southern California at any time during the application of the routing rule, nor could any such apportionment have been arranged conventionally among such connecting lines for the obvious reason that the distribution of such tonnage was beyond their control and had been reserved by the routing rule exclusively into the hands of the initial carriers. At no time during the application of the routing rule was there any convention or understanding of any kind between the initial carriers upon the one side and the connecting lines upon the other, in respect to the apportionment of tonnage or earnings on citrus fruit, or bearing in any way, directly or indirectly, upon the percentages in which tonnage in citrus fruits should be allotted to connections, or in which earnings from such traffic should be divided. The tonnage under the application of this routing rule was distributed by the initial carriers among their connections in amounts and proportions determined exclusively by the initial carriers without the knowledge or privity of the connections and as a matter of independent initiative upon the part of the initial carriers. These were the circumstances under which this traffic moved and such movement in the minds of the initial carriers was then and now in strict accord with the law, and such carriers believed at all times during such movement, and with the greatest respect to this court they still believe that the movement of this traffic under the conditions indicated was in no wise open to criticism as being a pooling arrangement within any definition or description of a pool as obnoxious to any law.

For over four years the business of the initial carriers in citrus fruits has been adapted to and conducted upon the routing rule as a basis of operation. If such routing rule should finally be determined to be within the legal rights of the carriers, it is their purpose to adhere to the same in the handling of the business
1782 out of which this cause arose. Meanwhile, and pending the appellate proceedings by which it is designed to review the decree of this honorable court, the effect of the decree and injunction herein, unless superseded by the order of this court will be to work the dislocation and confusion of the business of the initial carriers and to subject them to irreparable damage and a multiplicity of suits and further to open the way for renewed activity of the unlawful system of rebating and its consequent demoralization which it was the design, as also the effect, of the routing rule to bring to a stop.

The initial carriers in assigning the tonnage among their connections have been governed by the competition of such connections in respect to service and facilities. They have aimed to distribute this

freight among connecting lines in such proportions and at such times as to procure the best service and the best facilities for the shipper and to secure the best results in the way of moving the crop from the point of production to the various points of consumption in the eastern markets. They have been enabled beyond any capacity of the shipper in the premises to note the conditions as to congested, dilatory and circuitous routes and to govern the movement of the freight in such way as will best overcome these conditions. It is of great importance as well to the shipper as to the initial carrier that the special equipment necessary to be employed in this traffic should be promptly returned from its eastern destination to the point of origin and the degree of promptness with which connecting lines will return the empty equipment for further service is a substantial factor in the advantageous movement of the commodity and unless such equipment is handled promptly along these lines, the delays will work irreparable loss as well to the shipper as to the carrier. It is of importance to the carrier and ultimately to the shipper that the carrier should be enabled to overcome as far as possible the dead weight of the return haul and in this view it is matter of concern
1783 to the initial carrier that loads should be found, as far as possible, for the returning equipment, and for business reciprocities of this kind, the initial carrier must look to the connecting carrier and is put in position to exercise an intelligent and advantageous selection by the exercise of the routing rule as now applied. The difficulties and delays in transportation along connecting lines inadvisedly selected where the privilege of routing is in hands other than those of the carrier, result in claims for loss and damage as to which large amounts of money would have to be paid and it is in evidence in this case that many such claims arising in the past from unavoidable congestion on connecting lines, have been paid by the initial carriers, who have taken it upon themselves to seek reclamation from their connections, and a similar policy of payment in the first instance by initial carriers would in all probability be necessitated by a return to the business conditions under which the privilege of routing was exercised or sold by the shipper; and in this respect the solvency, willingness and promptness of connecting lines in respect to the adjustment of such claims for loss and damage, or of claims for loss and damage where the time and place of the injury to the freight might be debatable, would be a factor of such moment to the initial carriers in their business relations with connecting lines, that if not given a voice in the selection of the latter they would be irreparably damaged. It is the purpose and the interest of the initial carriers to afford the best possible service to the shippers and to move the traffic in conformity with law and to keep it free from illegal practices. The routing rule was applied in this view of the matter and has been in effect for over four years. Business has adjusted itself to that condition. Terminal deliveries and a practically unlimited right of diversion have been voluntarily accorded the ship-

pers. The disturbance of conditions and the irreparable injury consequent thereon, should the routing rule be annulled, should
1784 not be insisted upon, at least for the time being, if in a case balanced with doubt like this a substantial appeal is taken which may result in a different disposition of the case.

It is probable that the initial carriers during the season now coming upon them, will handle between 25,000 and 30,000 cars of citrus fruit, east bound. In the movement of this large crop there is more or less uncertainty as to the volume in which it shall be carried at any given point of time, inasmuch as the condition of the eastern market, and likewise the weather conditions, are factors in determining the measure of the movement with which the crop will go from point of production to point of consumption; and while such crop may come to the initial carriers with regularity, it is also true that conditions may be such that its movement will be postponed for a time and it will then come to the carriers in great and difficult volume. The equipment for moving this crop has necessarily been provided in advance and it is this equipment in kind and quantity which must be reckoned with as one of the facters in this problem of transportation. The initial carriers must be allowed the utmost freedom in the matter of routing this crop and under that condition of things it will require their united efforts to handle the equipment thus provided in such manner as to market the product to the best advantage. If routing is to be taken from the carriers and under these conditions of crop and equipment the privilege of routing is to be exercised by the shipper or by some other agency which may, in the light of previous history, become unlawfully interested in the matter, it will follow in the course of transportation, as it has occurred in the past, that quantities of these citrus fruits will be routed over circuitous lines or lines upon which traffic has become congested or of which the power is not adequate to the prompt movement of the business and as a result the freight is delayed in reaching the market. Where the special equipment of the initial carrier is tied up in the East, its prompt and necessary return is delayed and thereby irreparable injury and damage are worked not only to the initial
1785 carrier but also to the producers of citrus fruits in California.

It is important that when citrus fruit is forwarded under refrigeration, the lines best equipped to supply the necessary ice should be selected by the initial carrier in the application of the routing rule not by the shipper who lacks the information in the premises of the initial carrier; not by any agency other than the shipper to which he may have sold his privilege of routing and as to which the direction which the freight will take is determined by unlawful rebates. The selection of lines not properly equipped in the respect just noted would be likely to cause damage to the fruit and the same thing is to be said in the matter of intelligent ventilation and frost protection. Damage is also likely to occur in the matter of diversions and it is to save carrier and shipper from injury and damage that the carrier must apply the routing rule and limit the routing

of the business to such lines as are prompt and efficient in handling diversions.

Affiant further shows that if the initial carriers pending the appeal shall accept the routing as made by the shippers and shall thereby be subjected to loss, damage and delay in the movement of traffic in respect to the condition of the freight and in the handling, return and availability of equipment, as hereinabove indicated, and if such initial carriers have no right of action to recover for such loss and damage, their injury in that behalf will be irremediable; and if such carriers have the right of action against the shippers for such loss and damage in the event that the right of routing in the initial carriers be finally sustained, they will be forced to bring a multiplicity of suits against the various shippers to enforce such right and the condition thus created will amount to a practical denial of remedy or redress in the premises. Further, if such carriers shall fail or refuse to accept the routing as made by the shippers, they will be subjected to a multiplicity of suits by shippers or con-
1786 signees for alleged loss and damage claimed to accrue by reason of the denial to the shipper of the alleged right of routing and will be subjected to the vexation and expense of defending such actions and all this pending the final determination upon appeal by which the right of routing in the initial carrier may be sustained.

W. A. BISSELL.

Subscribed and sworn to before me this 15th day of October, 1904.

[SEAL.] GEORGE PATTISON,
Notary Public in and for the City and County of
San Francisco, State of California.

(Endorsed:) No. 1039. U. S. circuit court, 9th circuit, S. dist. Cal. S. div. Interstate Commerce Commission, complainant, *vs.* Southern Pacific Co. *et al.*, defendants. Affidavit of W. A. Bissell. Filed Oct. 17 1904 Wm. M. Van Dyke, clerk. Chas. N. Williams, deputy.

1787 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
No. 1039. In Equity.

STATE OF CALIFORNIA, City and County of San Francisco, } *ss.*:

G. W. Luce, being sworn, says: He is general freight agent of The Southern Pacific Company, one of the defendants herein, and at all the times herein mentioned was in charge of traffic hereinafter mentioned. Referring to the decree entered in the above entitled cause by which the defendants are enjoined from enforcing the routing provision now obtaining as to citrus fruit in their joint tariffs, this affiant respectfully says that unless such decree and injunction be suspended and superseded pending the appeal of defendants therefrom, the defendant Southern Pacific Company will be subjected to great and irreparable injury and to a multiplicity of suits.

This affiant avers that the rule and provision contained in these joint tariffs, as to citrus fruits, by which the initial carrier determined the routing of such commid-y upon connecting lines, parties to said joint tariff, rests upon the right of the initial carrier, arising by force of law, the commerce act apart, to specify the routing upon a through rate beyond its own terminal. As a common carrier, the Southern Pacific Company is under a legal duty to afford transportation upon its own lines and between its own termini; as to ulterior transportation along connecting lines, its legal duty ceases with the delivery of the freight to the given connection. Upon the assumption by the initial carrier of the ulterior transportation under a joint tariff with its connections, it is for such initial carrier to determine what agency it shall engage in the way of a connecting carrier for the transportation of the freight beyond its own terminal to final destination. The arrangement herein by this defendant, Southern Pacific Company, for through transportation of citrus fruit is a voluntary one, not compellable by law, and as to which the carrier has the option. The joint tariffs with which this cause is concerned and upon which as the basis, shippers have been accorded through transportation from point of

1788

origin to eastern markets for their citrus fruits, contained an express provision reserving the right of routing unqualifiedly to the initial carrier and such provision was a substantial inducement for the making of the joint tariff and the extension of its advantages to the shipper; and through transportation, as a transaction between the shipper and the initial carrier in respect to this citrus fruit, has been offered and taken on these terms. So far as the action of defendant Southern Pacific Company under the law is concerned, and so far as its business arrangements and contracts have been made and expressed, it has conducted and routed the transportation of citrus fruits along the lines of the general situation as indicated above.

Fully believing through all the previous history of this case and believing now in the legal right and the intrinsic justice of its routing policy in respect to citrus fruits, this defendant was led to a strict enforcement of the routing rule in respect to said citrus fruit by a set of conditions to which recognition is given in the opinion of this court upon the merits. Prior to the enforcement of the routing rule and under a system of through
1789 transportation upon a through rate, the integrity and the lawful maintenance of such rate had been attacked and vitiated by unlawful competition and struggles for business among the connecting lines of the initial carriers. The distribution of the citrus fruit by shippers among the connecting lines was not determined by lawful competition in the price of transportation for such price was a fixed, uniform and published rate, nor was such distribution determined by competition among connecting carriers in the matter of services and facilities. The course of transportation was fixed by secret cutting of the lawful rate—by the offer and acceptance of illegal rebates which grew to such an extent that scarcely a car of citrus fruit was hauled from southern California upon which an unlawful deduction from the regular tariff was not made. This unlawful competition by way of rebates and violation of the commerce act, while at first operating between connecting lines and shippers, settled down into an arrangement between connecting lines and the private car lines and such private car lines, operating with the funds illegally paid them as rebates by the connecting lines, purchased from the shipper the routing of the commodity and thereupon, routed such commodity in accordance with the rebates. The initial lines, under these conditions, were powerless. The connections competed unlawfully for the business. The shipper sold his privilege of distribution among connecting lines and the rebate, as handled by the car lines, routed the commodity. It was to break up this unlawful system and to maintain the rate according to law that the initial carriers insisted upon the routing provision in the joint tariffs. With the control of the routing in their hands, the practice of rebating was extinguished. Thereafter, and under the operation of this routing provision, transportation rates for citrus fruits as fixed by joint tariff and published in conformity with the

statute have been maintained in accordance with the policy and letter of the law.

1790 Since the enforcement of the routing rule, the contractual relations between the initial carriers and their connections have been exhibited by the published tariffs. No contract, agreement or understanding has been made or executed among the connecting carriers in respect to the apportionment among themselves of the tonnage or earnings in citrus fruit from southern California at any time during the application of the routing rule, nor could any such apportionment have been arranged conventionally among such connecting lines for the obvious reason that the distribution of such tonnage was beyond their control and had been reserved by the routing rule exclusively into the hands of the initial carriers. At no time during the application of the routing rule was there any convention or understanding of any kind between the initial carriers upon the one side and the connecting lines upon the other, in respect to the apportionment of tonnage or earnings in citrus fruit, or bearing in any way, directly or indirectly, upon the percentages in which tonnage in citrus fruits should be allotted to connections, or in which earnings from such traffic should be divided. The tonnage under the application of this routing rule was distributed by the initial carriers among their connections in amounts and proportions determined exclusively by the initial carriers without the knowledge or privity of the connections and as a matter of independent initiative upon the part of the initial carriers. These were the circumstances under which this traffic moved, and such movement in the minds of the initial carriers was then and now in strict accord with the law, and such carriers believed at all times during such movement, and with the greatest respect to this court they still believe that the movement of this traffic under the conditions indicated was in no wise open to criticism as being a pooling arrangement within any definition or description of a pool as obnoxious to any law.

1791 For over four years the business of the initial carriers in citrus fruits has been adapted to and conducted upon the routing rule as a basis of operation. If such routing rule should finally be determined to be within the legal rights of the carriers, it is their purpose to adhere to the same in the handling of the business out of which this cause arose. Meantime, and pending the appellate proceedings by which it is designed to review the decree of this honorable court, the effect of the decree and injunction herein, unless superseded by the order of this court will be to work the dislocation and confusion of the business of the initial carriers and to subject them to irreparable damage and a multiplicity of suits and further, to open the way for renewed activity of the unlawful system of rebating and its consequent demoralization which it was the design, as also the effect, of the routing rule to bring to a stop.

The initial carriers in assigning the tonnage among their connec-

tions have been governed by the competition of such connections in respect to service and facilities. They have aimed to distribute this freight among connecting lines in such proportions and at such times as to procure the best service and the best facilities for the shipper and to secure the best results in the way of moving the crop from the point of production to the various points of consumption in the eastern markets. They have been enabled beyond any capacity of the shipper in the premises to note the conditions as to congested, dilatory and circuitous routes and to govern the movement of the freight in such was as will best overcome these conditions. It is of great importance as well to the shipper as to the initial carrier that the special equipment necessary to be employed in this traffic should be promptly returned from its eastern destination to the point of origin and the degree of promptness with which connecting lines will return the empty equipment for further service is a substantial factor in the advantageous movement of the commodity and unless such
1792 equipment is handled promptly along these lines, the delays will work irreparable loss as well to the shipper as to the carrier. It is of importance to the carrier and ultimately to the shipper that the carrier should be enabled to overcome as far as possible the dead weight of the return haul and in this view it is matter of concern to the initial carrier that loads should be found, as far as possible, for the returning equipment, and for business reciprocities of this kind, the initial carrier must look to the connecting carrier and is put in position to exercise an intelligent and advantageous selection by the exercise of the routing rule as now applied. The difficulties and delays in transportation along connecting lines inadvisedly selected where the privilege of routing is in hands other than those of the carrier, result in claims for loss and damage as to which large amounts of money would have to be paid, and it is in evidence in this case that many such claims arising in the past from unavoidable congestion on connecting lines, have been paid by the initial carriers, who have taken it upon themselves to seek reclamation from their connections, and a similar policy of payment in the first instance by initial carriers would in all probability be necessitated by a return to the business conditions under which the privilege of routing was exercised or sold by the shipper; and in this respect the solvency, willingness and promptness of connecting lines in respect to the adjustment of such claims for loss and damage, or of claims for loss and damage where the time and place of the injury to the freight might be debatable, would be a factor of moment to the initial carriers in their business relations with connecting lines. It is the purpose and the interest of the initial carriers to afford the best possible service to the shippers and to move the traffic in conformity with law and to keep it free from illegal practices. The routing rule was applied in this view of the matter and has been in effect for over four years. Business has adjusted itself to that
1793 condition. Terminal deliveries and a practically unlimited right of diversion have been accorded the shippers. The dis-

turbance of conditions and the irreparable injury consequent thereon, should the routing rule be annulled, should not be insisted upon, at least for the time being, if in a case balanced with doubt like this a substantial appeal is taken which may result in a different disposition of the case.

It is probable that the initial carriers during the season now coming upon them, will handle between 25,000 and 30,000 cars of citrus fruit, east bound. In the movement of this large crop there is more or less uncertainty as to the volume in which it shall be carried at any given amount of time, inasmuch as the condition of the eastern market, and likewise the weather conditions, are factors in determining the measure of the movement with which the crop will go from point of production to point of consumption, and while such crop may come to the initial carriers with regularity, it is also true that conditions may be such that its movement will be postponed for a time and it will then come to the carriers in great and difficult volume. The equipment for moving this crop has necessarily been provided in advance and it is this equipment in kind and quantity which must be reckoned with as one of the factors in this problem of transportation. The initial carriers must be allowed the utmost freedom in the matter of routing this crop and under that condition of things it will require their united efforts to handle the equipment thus provided in such manner as to market the product to the best advantage. If routing is to be taken from the carriers and under these conditions of crop and equipment the privilege of routing is to be exercised by the shipper or by some other agency which may, in the light of previous history, become unlawfully interested in the matter, it will follow in the course of transportation, as it has occurred in the past, that quantities of these citrus fruits will be routed over
1794 circuitous lines or lines upon which traffic has become congested or of which the power is not adequate to the prompt movement of the business and as a result the freight is delayed in reaching the market. Where the special equipment of the initial carrier is tied up in the East, its prompt and necessary return is delayed and thereby irreparable injury and damage are worked not only to the initial carrier but also to the producers of citrus fruits in California. It is important that when citrus fruit is forwarded under refrigeration, the lines best equip-ed to supply the necessary ice should be selected by the initial carrier in the application of the routing rule—not by the shipper who lacks the information in the premises of the initial carrier; not by any agency other than the shipper to which he may have sold his privilege of routing and as to which the direction which the freight will take is determined by unlawful rebates. The selection of lines not properly equipped in the respect just noted would be likely to cause damage to the fruit and the same thing is to be said in the matter of intelligent ventilation and frost protection. Damage is also likely to occur in the matter of diversions and it is to save carrier and shipper from in-

jury and damage that the carrier must apply the routing rule and limit the routing of the business to such lines as are prompt and efficient in handling diversions.

Affiant further shows that if the initial carriers pending the appeal shall accept the routing as made by the shippers and shall thereby be subjected to loss, damage and delay in the movement of traffic in respect to the condition of the freight and in the handling, return and availability of equipment, as hereinabove indicated, and if such initial carriers have no right of action to recover for such loss and damage, their injury in that behalf will be irremediable; and if such carriers have the right of action against the shippers for such loss and damage in the event that the right of routing in the initial carriers be finally sustained, they will be forced to bring a multiplicity of suits against the
1795 various shippers to enforce such right and the condition thus created will amount to a practical denial of remedy or redress in the premises. Further, if such carriers shall fail or refuse to accept the routing as made by the shippers, they will be subjected to a multiplicity of suits by shippers or consignees for alleged loss and damage claimed to accrue by reason of the denial to the shipper of the alleged right of routing and will be subjected to the vexation and expense of defending such actions and all this pending the final determination upon appeal by which the right of routing in the initial carrier may be sustained.

G. W. LUCE.

Subscribed and sworn to before me this 17th day of October, 1904.

[SEAL.] WM. M. VAN DYKE,
Clerk U. S. Circuit Court, Southern District of California.

(Endorsed:) No. 1039. U. S. circuit court, 9th cir. So. dist. of Cal. So. div. Interstate Commerce Commission, complainant, *vs.* Southern Pacific Company, *et al.*, defendants. Affidavit of G. W. Luce. Filed Oct. 17 1904 Wm. M. Van Dyke, clerk. Chas. N. Williams, deputy.

1796 At a stated term, to wit, the July term, A. D. 1904, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Monday the seventeenth day of October, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Olin Wellborn, district judge.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

J. H. Call, Esq., special assistant United States attorney, being present as counsel for complainant, and P. F. Dunne, Esq., and

J. W. McKinley, Esq., being present as counsel for defendant The Southern Pacific Company, and T. J. Norton, Esq., and E. E. Millikin, Esq., being present as counsel for defendants other than the Southern Pacific Company, now come defendants by their said counsel and in open court move the court that in view of the appeal to be taken by said defendants from the decree of the court herein an order be made by the court that the decree be superseded and the injunction suspended pending said appeal, said motion being made under equity rule 93, and T. J. Norton, Esq., of counsel as aforesaid for defendants other than The Southern Pacific Company, having read in support of said motion and filed herein the affidavit of, W. A. Bissell, and having argued said motion in support thereof, thereupon, on motion of J. W. McKinley, Esq., of counsel as aforesaid for defendant The Southern Pacific Company, it is by the court ordered that Wm. F. Herrin, Esq., P. F. Dunne, Esq., and J. W. McKinley, Esq., be substituted in place of Wm. F. Herrin, Esq.,
1797 P. F. Dunne, Esq., and Flint and Barker, as attorneys for defendant The Southern Pacific Company, and thereupon J.W. McKinley, Esq., of counsel as aforesaid for defendant The Southern Pacific Company having read and filed herein the affidavit of G. W. Luce, and having argued said motion in support thereof, and said motion having been argued in opposition thereto by J. H. Call, Esq., assistant United States attorney as aforesaid, and court thereupon at the hour of 12:02 o'clock p. m. having taken a recess until the hour of 2 o'clock p. m. of this day, and now at the hour of 2 o'clock p. m. court having reconvened and counsel being present as before except J. W. McKinley, Esq., and J. H. Call, Esq., of counsel as aforesaid having resumed and continued his argument in opposition to said motion, and said motion having been argued in support thereof in reply by P. F. Dunne, Esq., of counsel as aforesaid, and in opposition thereto by J. H. Call, Esq., of counsel as aforesaid, and further in support in reply by T. J. Norton, Esq., and P. F. Dunne, Esq., of counsel as aforesaid for defendants, and the argument being closed, it is now by the court ordered that said cause be, and the same hereby is continued until Tuesday, October 18th, 1904, at 10:30 o'clock a. m. for further consideration.

1798 At a stated term, to wit, the July term, A. D. 1904, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Tuesday the eighteenth day of October, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Olin Wellborn, district judge.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

This cause coming on this day for further consideration of defendants' motion for an order that the decree be superseded and the in-

junction suspended pending the appeal to be taken by said defendants, J. H. Call, Esq., special assistant United States attorney, appearing as counsel for complainant, and J. W. McKinley, Esq., and P. F. Dunne, Esq., appearing as counsel for defendant The Southern Pacific Company, and T. J. Norton, Esq., and E. E. Millikin, Esq., appearing as counsel for defendants other than The Southern Pacific Company, and said motion having been further discussed by counsel in response to questions propounded by the court, and having been submitted to the court for its consideration and decision the court now announces that said motion will be decided as speedily as possible and that in the meanwhile the execution of the decree, be, and the same hereby is stayed until said pending motion is disposed of.

1799 At a stated term, to wit, the July term, A. D. 1904, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Thursday the twentieth day of October, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Olin Wellborn, district judge.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY ET AL., Defendants. } No. 1039.

This cause having heretofore been submitted to the court for its consideration and decision on defendants' motion for an order that the decree be superseded and the injunction suspended pending the appeal to be taken by said defendants, and now, J. H. Call, Esq., special assistant United States attorney, of counsel for complainant, and T. J. Norton, Esq., and E. E. Millikin, Esq., of counsel for defendants other than The Southern Pacific Company, being present in open court, and the court having been informed that counsel for the Southern Pacific Company do not desire that the announcement of the court's ruling should be delayed on account of their absence, and the court having duly considered defendants' said motion for an order that the decree be superseded and the injunction snspended pending the appeal to be taken by said defendants, and being fully advised in the premises, it is now by the court ordered that said motion be, and the same hereby is denied; it is further ordered that the temporary stays of the decree heretofore granted herein be, and the same hereby are vacated, set aside and terminated.

1800 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, v. THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Petition for Order Allowing Appeal.

To the Hon. Olin Wellborn, one of the judges of the above entitled court, presiding therein:

The above named defendant, The Southern California Railway Company, feeling itself to be aggrieved by the decree made and entered by the above named court in the above entitled cause on September 20, 1904, being the decree on the merits therein:

Wherein and whereby, among other things, it is adjudged and decreed that the defendants herein and their officers, agents, employés and servants are, from and after the making and entering of said decree, enjoined and restrained from continuing the violation or disobedience of an order of the Interstate Commerce Commission, and are enjoined and required to fully obey the same in all respects the said order of said Interstate Commerce Commission requiring the said defendants to wholly cease and desist from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons or other citrus fruits from points in southern California to points on and

1801 east of the Missouri river and other eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established joint or continuous lines of routes between any of the aforesaid points of shipment and designation at the published schedule rate or charge applying over such route or line and from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons and other citrus fruits from points in southern California to points on and east of the Missouri river for and during all of the time such rate or charge may be lawfully enforced over each and every of the established routes upon which the said rate or charge is in their published joint schedules or rates of transportation stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes, when specified by the

shipper for the transportation of his property, is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants, or either of them, may determine;

Does hereby petition said court for an order allowing said defendant to prosecute an appeal from said decree and each and every part thereof to the Supreme Court of the United States for the reasons set forth in the assignment of errors annexed hereto and filed herewith.

The said defendant, The Southern California Railway Company, prays that its petition for said appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, may be sent to the Supreme Court of the United States under and according to the laws of the United States in such cases made and provided.

ROBERT DUNLAP
T. J. NORTON,
Attorneys for said Defendant, Southern California Railway Company.

1802 (Endorsed:) No. 1039. In the circuit court of the United States, ninth circuit, southern district of California, southern division. The Interstate Commerce Commission, complainant, vs. The Southern Pacific Company, *et al.*, defendants. Petition for and allowing appeal. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk.

1803 In the Circuit Court of the United States in and for the Ninth Judicial Circuit, Southern District of California, Southern Division.

INTERSTATE COMMERCE COMMISSION, Complainant, *v.* SOUTHERN PACIFIC COMPANY, ATCHISON, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, Sometimes Designated as Santa Fe Pacific Railway Company, and Southern California Railway Company, Defendants.	In Equity. No. 1039.

Assignment of Errors by Defendant Southern California Railway Company.

The Southern California Railway Company, defendant and appellant herein, hereby assigns error to the decree herein in the above entitled cause, made and entered September 20, 1904, in the following particulars:

1. Said circuit court was without jurisdiction, as constituted and

acting herein, in and during the proceedings in this case, to hear and determine said cause.

2. The court erred in overruling the demurrer of this defendant to the petition and complaint herein of the above named complainant.

3. The court erred in finding that the allegations of the complaint herein are true, except to the extent that such allegations are admitted in and by the answer of this defendant.

4. The court erred in making any findings in reference to any allegation of fact in the complaint herein, except to the extent of such allegations of fact as are involved in the lawfulness of the order of the Interstate Commerce Commission herein as made by said commission.

1804 5. The court erred in holding that the routing provision in the joint tariff, mentioned in said decree, is an agreement and combination, or agreement or combination, for any pooling of any freights of any different or competing railroads, or is in any respect violative of section 5 of any provision thereof of the commerce act.

6. The court erred in holding that the order of the Interstate Commerce Commission, set forth in said degree, is a lawful order.

7. The court erred in decreeing that the defendants above named, or any or either of them, are severally or otherwise or at all, from and after the making and entering of said decree, enjoined and restrained from further continuing any violation or disobedience of the said order of said commission, and enjoining and requiring the defendants, or any or either of them, to fully obey such order in any respect or in all respects.

8. The findings and decree of the court herein as above complained of are contrary to the law of the land and the evidence in this case.

9. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision, were otherwise than in the exercise of their right and authority as arising by law in the premises.

10. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision were otherwise than in the exercise of their contractual right and authority within and under the law in the premises.

11. The court erred in holding that the complainant was entitled to recover any costs herein from the defendants or any or either of them.

Wherefore, this defendant prays that said decree be reversed.

ROBERT DUNLAP,
T. J. NORTON,
Attorneys for said Defendant, Southern California Railway Company.

1805 (Endorsed:) No. 1039. In the circuit court of the United States, in and for the ninth judicial circuit, southern district of California, southern division. Interstate Commerce Commission, complaintant, *v.* Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, sometimes designated as Santa Fe Pacific Railway Company, and Southern California Railway Company, defendants. Assignment of errors by defendant Southern California Railway Company. Filed Oct. 26 1904. Wm. M. Van Dyke, clerk.

1806 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as The Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Bond on Appeal.

Know all men by these presents: that we, Southern California Railway Company, a corporation, defendant and appellant in above entitled cause, as principal, and The United States Fidelity & Guaranty Company, a corporation of Baltimore, Maryland, as surety, are held and firmly bound unto the complainant above named in the above entitled action in the sum of one thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we hereby bind ourselves and each of us and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of October, 1904.

Whereas, on the 20th day of September, 1904, a decree was entered in the above entitled cause in the court aforesaid in favor of the complainant and against the defendants on the merits in said cause; and

Whereas, thereafter and on the 22nd day of September, 1904, an amendment to said decree decreeing and adjudging that
1807 said complainant have and recover from said defendants its costs and disbursements incurred in said cause, was made and entered in said cause; and

Whereas, this defendant is prosecuting an appeal from said decree to the Supreme Court of the United States and this bond is executed for the purpose of perfecting said appeal;

Now, therefore, the condition of the above obligation is such that if the said defendant and appellant Southern California Railway Company, shall prosecute its said appeal to effect and shall answer all costs that may be awarded against it if it fails to make its plea good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

SOUTHERN CALIFORNIA RAILWAY COMPANY,
By ROBERT DUNLAP &
T. J. NORTON,
Its Attorneys.
THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By Its Attorney in Fact FRANK M. KELSEY. [SEAL.]

The foregoing bond is approved both as to form and sufficiency of sureties this 26th day of Oct., 1904.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. In the circuit court of the United States, ninth circuit, southern district of California, southern division. Interstate Commerce Commission, complainant, *v.* Southern Pacific Company, *et al.*, defendants. Bond on appeal. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk.

1808 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Order Allowing Appeal.

The petition of the above named defendant The Southern California Railway Company having been filed for an order allowing an appeal in said cause from the decree entered therein on the merits on September 20, 1904, and as amended and entered September 22, 1904, in respect to costs, together with the assignment of errors, coming on this day to be heard,

The said defendant then and there tendered to the court its bond for damages and costs to operate as a supersedeas herein under section 1000 of the Revised Statutes of the United States, the said bond being in the penal sum of five thousand ($5,000) dollars, and sufficient as to form and sureties if the case were one for a supersedeas, and said defendant at the same time offered, in case the penal sum of said bond was not satisfactory to the court, to execute, tender to this court for acceptance and approval and file a like bond, with good and sufficient sureties, in such greater penal sum as this
1809 court should require; but the court then and there refused to approve any supersedeas bond on such appeal.

Thereupon the said defendant, without waiving and still insisting upon its rights to have such bond approved and filed and to a supersedeas herein, tendered to the court its bond for costs on such appeal in the sum of one thousand ($1,000) dollars;

And now it is ordered that an appeal be and the same is hereby allowed from said decree, and that the said bond for costs, as so tendered, be and the same is hereby approved and directed to be filed herein.

And it is further ordered that a transcript of the record be forthwith transmitted to the United States Supreme Court, said record to consist of the pleadings, papers, evidence and files used upon the hearing of said cause upon the merits in this court, and the journal entries therein, together with the papers filed therein upon this appeal.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, ninth circuit, southern district of California, southern division. The Interstate Commerce Commission, complainant, *v.* Sou. Pac. Co. *et al.*, defendants. Order allowing appeal by S. C. Ry. Co. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. T. J. Norton, E. E. Millikin, U. T. Clotfelter, 516 Conservative Life building, Los Angeles, Cal. telephone main 1466. for def'ts other then S. P. Co.

1810 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
v.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
No. 1039. In Equity.

Petition for Order Allowing Appeal.

To the Hon. Olin Wellborn, one of the judges of the above entitled court, presiding therein:

The above named defendant, The Atchison, Topeka and Santa Fe Railway Company, feeling itself to be aggrieved by the decree made and entered by the above named court in the above entitled cause on September 20, 1904, being the decree on the merits therein;

Wherein and whereby, among other things, it is adjudged and decreed that the defendants herein and their officers, agents, employés and servants are, from and after the making and entering of said decree, enjoined and restrained from continuing the violation or disobedience of an order of the Interstate Commerce Commission, and are enjoined and required to fully obey the same in all respects, the said order of said Interstate Commerce Commission requiring the said defendants to wholly cease and desist from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons or other citrus fruits from points in southern California to points on and east of the Missouri river and other
1811 eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established published joint or continuous lines of routes between any of the aforesaid points of shipment and designation at the published schedule rate or charge applying over such route or line and from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons and other citrus fruits from points in southern California to points on and east of the Missouri river for and during all of the time such rate or charge may be lawfully enforced over each and every of the established routes upon which the said rate or charge is in their published joint schedules or rates of transportation stated to apply, and from further continuing their present practice whereby

the application of such published rate or charge over any of such published established routes, when specified by the shipper for the transportation of his property, is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants, or either of them, may determine;

Does hereby petition said court for an order allowing said defendant to prosecute an appeal from said decree and each and every part thereof to the Supreme Court of the United States for the reasons set forth in the assignment of errors annexed hereto and filed herewith.

The said defendant, The Atchison, Topeka and Santa Fe Railway Company, prays that its petition for said appeal may be allowed and that a transcript of the record, proceedings and papers, upon which the said decree was made, may be sent to the Supreme Court of the United States under and according to the laws of the United States in such cases made and provided.

ROBERT DUNLAP,
1812 T. J. NORTON,
Attorneys for said Defendant, The Atchison, Topeka and Santa Fe Railway Company.

(Endorsed:) No. 1039. In the circuit court of the United States, ninth circuit, southern district of California, southern division. The Interstate Commerce Commission, complainant, *v.* The Southern Pacific Company, *et al.*, defendants. Petition for order allowing appeal. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk.

1813 In the Circuit Court of the United States in and for the Ninth Judicial Circuit, Southern District of California, Southern Division.

INTERSTATE COMMERCE COMMISSION, Complainant, *v.* SOUTHERN PACIFIC COMPANY, ATCHISON, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, Sometimes Designated as Santa Fe Pacific Railway Company, and Southern California Railway Company, Defendants.	In Equity. No. 1039.

Assignment of Errors by Defendant Atchison, Topeka & Santa Fe Railway Company.

The Atchison, Topeka & Santa Fe Railway Company defendant and appellant herein, hereby assigns error to the decree herein in the above entitled cause, made and entered September 20, 1904, in the following particulars:

1. Said circuit court was without jurisdiction, as constituted and

acting herein, in and during the proceedings in this case, to hear and determine said cause.

2. The court erred in overruling the demurrer of this defendant to the petition and complaint herein of the above named complainant.

3. The court erred in finding that the allegations of the complaint herein are true, except to the extent that such allegations are admitted in and by the answer of this defendant.

4. The court erred in making any findings in reference to any allegation of fact in the complaint herein, except to the extent of such allegations of fact as are involved in the lawfulness
1814 of the order of the Interstate Commerce Commission herein as made by said commission.

5. The court erred in holding that the routing provision in the joint tariff, mentioned in said decree, is an agreement and combination, or agreement or combination, for any pooling of any freights of any different or competing railroads, or is in any respect violative of section 5 of any provision thereof of the commerce act.

6. The court erred in holding that the order of the Interstate Commerce Commission, set forth in said decree, is a lawful order.

7. The court erred in decreeing that the defendants above named, or any or either of them, are severally or otherwise or at all, from and after the making and entering of said decree, enjoined and restrained from further continuing any violation or disobedience of the said order of said commission, and enjoining and requiring the defendants, or any or either of them, to fully obey such order in any respect or in all respects.

8. The findings and decree of the court herein as above complained of are contrary to the law of the land and the evidence in this case.

9. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision were otherwise than in the exercise of their right and authority as arising by law in the premises.

10. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision were otherwise than in the exercise of their contractual right and authority within and under the law in the premises.

11. The court erred in holding that the complainant was entitled to recover any costs herein from the defendants or any or either of them.

1815 Wherefore, this defendant prays that said decree be reversed.

ROBERT DUNLAP,
T. J. NORTON,
Attorneys for said Defendant, Atchison, Topeka & Santa Fe Railway Company.

(Endorsed:) No. 1039. In the circuit court of the United States, in and for the ninth judicial circuit, southern district of California, southern division. Interstate Commerce Commission, complainant, *v.* Southern Pacific Company, *et al.*, defendants. Assignment of errors by defendant Atchison, Topeka & Santa Fe Railway Company. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk.

1816 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Bond on Appeal.

Know all men by these presents: That we, Atchison, Topeka & Santa Fe Railway Company, a corporation, defendant and appellant in above entitled cause, as principal, and The United States Fidelity & Guaranty Company, a corporation of Baltimore, Maryland, as surety, are held and firmly bound unto the complainant above named in the above entitled action in the sum of one thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we hereby bind ourselves and each of us and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firm by these presents.

Sealed with our seals and dated this 24th day of October, 1904.

Whereas, on the 20th day of September, 1904, a decree was entered in the above entitled cause in the court aforesaid in favor of the complainant and against the defendants on the merits in said cause; and

Whereas, thereafter and on the 22nd day of September
1817 1904, an amendment to said decree decreeing and adjudging that said complainant have and recover from said defendants its costs and disbursements incurred in said cause, was made and entered in said cause; and

Whereas, this defendant is prosecuting an appeal from said decree to the Supreme Court of the United States and this bond is executed for the purpose of perfecting said appeal;

Now, therefore, the condition of the above obligation is such that if the said defendant and appellant Atchison, Topeka & Santa Fe

Railway Company, shall prosecute its said appeal to effect and shall answer all costs that may be awarded against it if it fails to make its plea good, then this obligation shall be void; otherwise, the same shall remain in full force and virtue.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP AND
T. J. NORTON, *Its Attorneys.*
THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By its attorney in fact,
[SEAL.] FRANK M. KELSEY.

The foregoing bond is approved both as to form and sufficiency of sureties this 26th day of Oct. 1904.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 1039. In the circuit court of the United States, ninth circuit, southern district of California, southern division. Interstate Commerce Commission, complainant, *v.* Southern Pacific Company, *et al.*, defendants. Bond on appeal. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk.

1818 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeak and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Order Allowing Appeal.

The petition of the above named defendant The Atchison, Topeka and Santa Fe Railway Company having been filed for an order allowing an appeal in said cause from the decree entered therein on the merits on September 20, 1904, and as amended and entered September 22, 1904, in respect to costs, together with the assignment of errors, coming on this day to be heard,

The said defendant then and there tendered to the court its bond for damages and costs to operate as a supersedeas herein under section 1000 of the Revised Statutes of the United States, the said bond

being in the penal sum of five thousand ($5000) dollars, and sufficient as to form and sureties if the case were one for a supersedeas and said defendant at the same time offered, in case the penal sum of said bond was not satisfactory to the court, to execute tender to this court for acceptance and approval, and file a like bond, with good and sufficient sureties, in such greater penal sum as this court should require; but the court then and there refused to approve any supersedeas bond on such appeal.

1819 Thereupon the said defendant, without waiving and still insisting upon its rights to have such bond approved and filed and to a supersedeas herein, tendered to the court its bond for costs on such appeal in the sum of one thousand ($1000) dollars;

And now it is ordered that an appeal be and the same is hereby allowed from said decree, and that the said bond for costs, as so tendered, be and the same is hereby approved and directed to be filed herein.

And it is further ordered that a transcript of the record be forthwith transmitted to the United States Supreme Court, said record to consist of the pleadings, papers, evidence and files used upon the hearing of said cause upon the merits in this court, and the journal entries therein, together with the papers filed therein upon this appeal.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, ninth circuit, southern district of California, southern division. The Interstate Commerce Commission, complainant, *v.* Sou. Pac. Co., defendants. (Original) Order allowing appeal by A. T. & S. F. Ry. Co. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. T. J. Norton, E. E. Millikin, U. T. Clotfelter, 516 Conservative Life building, Los Angeles, Cal. Telephone main 1466. Attorneys for defendants other than S. P. Co.

1820 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
v.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
No. 1039. In Equity.

Petition for Order Allowing Appeal.

To the Hon. Olin Wellborn, one of the judges of the above entitled court, presiding therein:

The above named defendant, The Santa Fe Pacific Railroad Company, feeling itself to be aggrieved by the decree made and entered by the above named court in the above entitled cause on September 20, 1904, being the decree on the merits therein:

Wherein and whereby, among other things, it is adjudged and decreed that the defendants herein and their officers, agents, employés and servants are, from and after the making and entering of said decree, enjoined and restrained from continuing the violation or disobedience of an order of the Interstate Commerce Commission, and are enjoined and required to fully obey the same in all respects, the said order of said Interstate Commerce Commission requiring the said defendants to wholly cease and desist from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons or other citrus fruits from points in southern California to points on and east of the Missouri river and other
1821 eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established published joint or continuous lines of routes between any of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line and from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons and other citrus fruits from points in southern California to points on and east of the Missouri river for and during all of the time such rate or charge may be lawfully enforced over each and every of the established routes upon which the said rate or charge is in their published joint schedules or rates of transportation stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such

published established routes, when specified by the shipper for the transportation of his property, is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants, or either of them, may determine;

Does hereby petition said court for an order allowing said defendant to prosecute an appeal from said decree and each and every part thereof to the Supreme Court of the United States for the reasons set forth in the assignment of errors annexed hereto and filed herewith.

The said defendant, The Santa Fe Pacific Railroad Company, prays that its petition for said appeal may be allowed and that a transcript of the record, proceedings and papers, upon which the said decree was made, may be sent to the Supreme Court of the United States under and according to the laws of the United States in such cases made and provided.

ROBERT DUNLAP,
T. J. NORTON,
Attorneys for said Defendant, Santa Fe Pacific Railroad Company.

1822 (Endorsed:) No. 1039. In the circuit court of the United States, ninth circuit, southern district of California, southern division. The Interstate Commerce Commission, complainant, *v.* The Southern Pacific Company, *et al.*, defendant-. Petition for order allowing appeal. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk.

1823 In the Circuit Court of the United States, in and for the Ninth Judicial Circuit, Southern District of California, Southern Division.

INTERSTATE COMMERCE COMMISSION, Complainant, *v.* SOUTHERN PACIFIC COMPANY, ATCHISON, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, Sometimes Designated as Santa Fe Pacific Railway Company, and Southern California Railway Company, Defendants.	In Equity. No. 1039.

Assignment of Errors by Defendant Santa Fe Pacific Railroad Company.

The Santa Fe Pacific Railroad Company, defendant and appellant herein, hereby assigns error to the decree herein in the above entitled cause, made and entered September 20, 1904, in the following particulars:

1. Said circuit court was without jurisdiction, as constituted and

acting herein, in and during the proceedings in this case, to hear and determine said cause.

2. Said court erred in overruling the demurrer of this defendant to the petition and complaint herein of the above named complainant.

3. The court erred in finding that the allegations of the complaint herein are true, except to the extent that such allegations are admitted in and by the answer of this defendant.

4. The court erred in making any findings in reference to any allegation of fact in the complaint herein, except to the extent of such allegations of fact as are involved in the lawfulness of the order of the Interstate Commerce Commission herein as made by said commission.

1824 5. The court erred in holding that the routing provision in the joint tariff, mentioned in said decree, is an agreement and combination, or agreement or combination, for any pooling of any freights of any different or competing railroads, or is in any respect violative of section 5 of any provision whereof of the commerce act.

6. The court erred in holding that the order of the Interstate Commerce Commission, set forth in said decree, is a lawful order.

7. The court erred in decreeing that the defendants above named, or any or either of them, are severally or otherwise or at all, from and after the making and entering of said decree, enjoined and restrained from further continuing any violation or disobedience of the said order of said commission, and enjoining and requiring the defendants, or any or either of them, to fully obey such order in any respect or in all respects.

8. The findings and decree of the court herein as above complained of are contrary to the law of the land and the evidence in this case.

9. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision, were otherwise than in the exercise of their right and authority as arising by law in the premises.

10. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision were otherwise than in the exercise of their contractual right and authority within and under the law in the premises.

11. The court erred in holding that the complainant was entitled to recover any costs herein from the defendants or any or either of them.

Wherefore, this defendant prays that said decree be reversed.

ROBERT DUNLAP,
T. J. NORTON,
Attorneys for said Defendant, Santa Fe
Pacific Railroad Company.

1825 (Endorsed:) No. 1039. In the circuit court of the United States, in and for the ninth judicial circuit, southern district of California, southern division. Interstate Commerce Commission,

complainant, *v.* Southern Pacific Company, *et al.*, defendants. Assignment of errors by defendant Santa Fe Pacific Railroad Company. Filed Oct. 26 1904. Wm. M. Van Dyke, clerk.

1826 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039.	In Equity.

Bond on Appeal.

Know all men by these presents: That we, Santa Fe Pacific Railroad Company, a corporation, defendant and appellant in above entitled cause, as principal, and The United States Fidelity & Guaranty Company, a corporation, of Baltimore, Maryland, as surety, are held and firmly bound unto the complainant above named in the above entitled action in the sum of one thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we hereby bind ourselves and each of us and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of October, 1904.

Whereas, on the 20th day of September, 1904, a decree was entered in the above entitled cause in the court aforesaid in favor of the complainant and against the defendants on the merits in said cause; and

1827 Whereas, thereafter and on the 22nd day of September, 1904, an amendment to said decree decreeing and adjudging that said complainant have and recover from said defendant its costs and disbursements incurred in said cause, was made and entered in said cause; and

Whereas, this defendant is prosecuting an appeal from said decree to the Supreme Court of the United States and this bond is executed for the purpose of perfecting said appeal;

Now, therefore, the condition of the above obligation is such that if the said defendant and appellant Santa Fe Pacific Railroad Company, shall prosecute its said appeal to effect and shall answer all costs that may be awarded against it if it fails to make its plea good,

then this obligation shall be void; otherwise the same shall remain in full force and virtue.

SANTA FE PACIFIC RAILROAD COMPANY,
By ROBERT DUNLAP AND
T. J. NORTON, Its Attorneys.
THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By Its Attorney in Fact, FRANK M. KELSEY. [SEAL.]

The foregoing bond is approved both as to form and sufficiency of sureties this 26th day of Oct., 1904.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. In the circuit court of the United States, ninth circuit, southern district of California, southern division. Interstate Commerce Commission, complainant, *v.* Southern Pacific Company, *et al.* defendants. Bond on appeal. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk.

1828 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
v.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
No. 1039. In Equity.

Order Allowing Appeal.

The petition of the above named defendant The Santa Fe Pacific Railroad Company having been filed for an order allowing an appeal in said cause from the decree entered therein on the merits on September 20, 1904, and as amended and entered September 22, 1904, in respect to costs, together with the assignments of errors, coming on this day to be heard.

The said defendant then and there tendered to the court its bond for damages and costs to operate as a supersedeas herein under section 1000 of the Revised Statutes of the United States, the said bond being in the penal sum of five thousand ($5,000) dollars, and sufficient as to form and sureties if the case were one for a supersedeas, and said defendant at the same time offered, in case the penal sum

of said bond was not satisfactory to the court, to execute, tender to this court for acceptance and approval, and file a like bond, with good and sufficient sureties, in such greater penal sum as this court should require; but the court then and there refused to approve any supersedeas bond on such appeal.

1829 Thereupon the said defendant, without waiving and still insisting upon its rights to have such bond approved and filed and to a supersedeas herein, tendered to the court its bond for costs on such appeal in the sum of one thousand ($1,000) dollars;

And now it is ordered that an appeal be and the same is hereby allowed from said decree, and that the said bond for costs, as so tendered, be and the same is hereby approved and directed to be filed herein.

And it is further ordered that a transcript of the record be forthwith transmitted to the United States Supreme Court, said record to consist of the pleadings, papers, evidence and files used upon the hearing of said cause upon the merits in this court, and the journal entries therein, together with the papers filed therein upon this appeal.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, ninth circuit, southern district of California, southern division. The Interstate Commerce Commission, complainant, *v.* Sou. Pac. Co., *et al.*, defendants Order allowing appeal by S. F. P. R. R. Co. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. T. J. Norton, E. E. Millikin, U. T. Clotfelter, 516 Conservative Life building, Los Angeles, Cal. Telephone main 1466. Attorneys for defendants other that S. P. Co.

1830 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Petition for Order Allowing Appeal.

To the Hon. Olin Wellborn, one of the judges of the above entitled court, presiding therein:

The above named defendants, Southern Pacific Company, Atchison Topeka & Santa Fe Railway Company, Santa Fe Pacific Rail-

road Company and Southern California Railway Company, feeling themselves to be aggrieved by the decree made and entered by the above named court in the above entitled cause on September 20th, 1904, and amended September 22nd, 1904, being the decree on the merits therein:

Wherein and whereby, among other things, it is adjudged and decreed that the defendants herein and their officers, agents, employés and servants are, from and after the making and entering of said decree, enjoined and restrained from continuing the violation or disobedience of an order of the Interstate Commerce Commission, and are enjoined and required to fully obey the same in all respects, the said order of said Interstate — Commission requiring the said defendants to wholly cease and desist from maintaining
1831 or enforcing a rule or regulation whereby shippers of oranges, lemons or other citrus fruits from points in southern California to points on and east of the Missouri river and other eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established published joint or continuous lines or routes between any of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line and from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons and other citrus fruits from points in southern California to points on and east of the Missouri river for and during all of the time such rate or charge may be lawfully enforced over each and every of the established routes upon which the said rate or charge is in their published joint schedules or rates of transportation stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes, when specified by the shipper for the transportation of his property, is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants, or either of them may determine;

Do hereby petition said court for an order allowing said defendants to prosecute an appeal from said decree and each and every part thereof to the Supreme Court of the United States for the reasons set forth in the assignment of errors annexed hereto and filed herewith.

The said defendants, Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company and Southern California Railway Company, pray that their petition for said appeal may be allowed and that a transcript of the record, proceedings and papers, upon which the said decree was
1832 made may be sent to the Supreme Court of the United States

under and according to the laws of the United States in such cases made and provided.

WM. F. HERRIN,
P. F. DUNNE,
J. W. McKINLEY,
Attorneys for Defendant Southern Pacific Company.
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for Defendants Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railway Company, and Southern California Railway Company.

(Endorsed:) Original. No. 1039. In the United States circuit court, 9th cir., So. dist. of Cal., So. div. The Interstate Commerce Commission, complainant, *vs.* The Southern Pacific Company, *et al.*, defendants. Petition for order allowing appeal. Def'ts' — to Supreme Court. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. Wm. F. Herrin, P. F. Dunne, J. W. McKinley, rooms 12–16 Rindge bldg., 254 So. Broadway, Los Angeles, Cal. attorney for defendants.

1833 In the Circuit Court of the United States in and for the Ninth Judicial Circuit, Southern District of California, Southern Division.

INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* SOUTHERN PACIFIC COMPANY, ATCHISON, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, Sometimes Designated as Santa Fe Pacific Railway Company, and Southern California Railway Company, Defendants.	In Equity. No. 1039.

Assignment of Errors by Defendants Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and Southern California Railway Company.

On Appeal to the U. S. Supreme Court.

Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company and Southern California Railway Company, defendants and appellants herein, hereby assign error to the decree herein in the above-entitled cause, made and entered September 20, 1904, and amended September 22nd, 1904, in the following particulars:

1. Said circuit court was without jurisdiction, as constituted and acting herein, in and during the proceedings in this case, to hear and determine said cause.

2. The court erred in overruling the demurrer of these defendants to the petition and complaint herein of the above-named complainant.

3. The court erred in finding that the allegations of the complaint herein are true, except to the extent that such allegations are admitted in and by the answers of these defendants.

1834 4. The court erred in making any finding in reference to any allegation of fact in the complaint herein, except to the extent of such allegations of fact as are involved in the lawfulness of the order of the Interstate Commerce Commission herein as made by said commission.

5. The court erred in holding that the routing provision in the joint tariff, mentioned in said decree, is an agreement and combination, or agreement or combination, for any pooling of any freights of any different or competing railroads, or is in any respect violative of section 5 or any provision thereof of the commerce act.

6. The court erred in holding that the order of the Interstate Commerce Commission, set forth in said decree, is a lawful order.

7. The court erred in decreeing that the defendants above-named, or any or either of them, are severally or otherwise or at all, from and after the making and entering of said decree, enjoined and restrained from further continuing any violation or disobedience of the said order of said commission, and enjoining and requiring the defendants, or any or either of them, to fully obey such order in any respect or in all respects.

8. The findings and decree of the court herein as above complained of are contrary to the law of the land and the evidence in this case.

9. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision were otherwise than in the exercise of their right and authority as arising by law in the premises.

10. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision were otherwise than in the exercise of their contractual right and authority within and under the law in the premises.

1835 11. The court erred in holding that the complainant was entitled to recover any costs herein from the defendants or any or either of them.

Wherefore, these defendants pray that said decree be reversed.

WM. F. HERRIN,
P. F. DUNNE,
J. W. McKINLEY,
Attorneys for Defendant Southern Pacific Company.

ROBERT DUNLAP,
T. J. NORTON,
Attorneys for Defendants Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, & Southern California Railway Company.

(Endorsed :) Original. In equity. No. 1039. In the United States circuit court, 9th cir. So. dist. of Cal. So. div. The Interstate Commerce Commission, complainant, *vs.* The Southern Pacific Company, *et al.*, defendants. Def't's assignment of errors on appeal to U. S. Supreme Court. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. Wm. F. Herrin, P. F. Dunne, J. W. McKinley, rooms 12–16 Rindge bldg. 254 So. Broadway, Los Angeles, Cal. attorney- for defendants.

1836 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Bond on Appeal.

Know all men by these presents: that we, Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company and Southern California Railway Company, corporations defendant and appellant in above entitled cause, as principals, and Jacob Baruch and Chas. Seyler, as sureties, are held and firmly bound unto the complainant above named in the above entitled action in the sum of one thousand dollars ($1,000), lawful money of the United States, for the payment of which, well and truly to be made, we hereby bind ourselves and each of us and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of October, 1904.

Whereas, on the 20th day of September, 1904, a decree was entered in the above entitled cause in the court aforesaid in favor of the complainant and against the defendants on the merits in said cause, and entered as amended in respect to costs in said court and cause on September 22nd, 1904; and

1837 Whereas, these defendants are prosecuting an appeal therefrom to the Supreme Court of the United States and this bond is executed for the purpose of perfecting said appeal.

Now, therefore, the condition of the above obligation is such that if the said defendants and appellants, Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company and Southern California Railway Company shall

prosecute their said appeal to effect and shall answer all costs that may be awarded against them if they fail to make their plea good, then this obligation shall be void; otherwise, the same shall remain in full force and virtue.

SOUTHERN PACIFIC COMPANY,
By N. T. SMITH, Treasurer.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP &
T. J. NORTON, Its Attorneys.
SANTA FE PACIFIC RAILROAD COMPANY,
By ROBERT DUNLAP &
T. J. NORTON, Its Attorneys.
SOUTHERN CALIFORNIA RAILWAY COMPANY,
By ROBERT DUNLAP &
T. J. NORTON, Its Attorneys.
CHAS. SEYLER.
JACOB BARUCH.

UNITED STATES OF AMERICA,
State of California, City and County of Los Angeles, } ss:

Jacob Baruch and Chas. Seyler being each duly and severally sworn, each for himself and not one for the other, says:

I am a surety upon the above undertaking. I reside in the city and county of Los Angeles, State of California, and am a
1838 householder therein, and I am worth the sum of one thousand ($1000) dollars over and above all my just debts and liabilities in property situated in said State of California, exclusive of property exempt from *taxation*.

JACOB BARUCH.
CHAS. SEYLER.

Subscribed and sworn to before me this 24th day of Oct., 1904.

[SEAL.] W. M. CASWELL,
Notary Public in and for the City and County of Los Angeles, State of California.

The foregoing bond is approved both as to form and sufficiency of sureties this 26th day of Oct., 1904.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. United States circuit court, ninth circuit, southern dist. of California, sou. division. The Interstate Commerce Commission, plaintiff, *vs.* Southern Pacific Co. *et al.*, defendants. Bond on appeal. Filed Oct. 26 1904. Wm. M. Van Dyke, clerk.

1839 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
v.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.

No. 1039. In Equity.

Order Allowing Appeal.

The petition of the above named defendants, The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, and The Southern California Railway Company, having been filed for an order allowing an appeal in said cause from the decree entered therein on the merits on September 20, 1904, and as amended and entered September 22, 1904, in respect to costs, together with the assignments of errors, coming on this day to be heard,

The said defendants then and there tendered to the court their bond for damages and costs to operate as a supersedeas herein under section 1000 of the Revised Statutes of the United States, the said bond being in the penal sum of five thousand ($5,000) dollars, and sufficient as to form and sureties if the case were one for a supersedeas, and said defendant at the same time offered, in case the penal sum of said bond was not satisfactory to the court, to execute, tender to this court for acceptance and approval, and file a like bond, with good and sufficient sureties, in such greater penal sum as this court should require; but the court then and there
1840 refused to approve any supersedeas bond on such appeal.

Thereupon the said defendants, without waiving and still insisting upon their right to have such bond approved and filed and to a supersedeas herein, tendered to the court their bond for costs on such appeal in the sum of one thousand ($1,000) dollars;

And now it is ordered that an appeal be and the same is hereby allowed from said decree, and that the said bond for costs, as so tendered, be and the same is hereby approved and directed to be filed herein.

And it is further ordered that a transcript of the record be forthwith transmitted to the United States Supreme Court, said record to consist of the pleadings, papers, evidence and files used upon the hearing of said cause upon the merits in this court, and the journal

entries therein, together with the papers filed therein upon this appeal.

OLIN WELLBORN, Judge.

(Endorsed :) No. 1039. U. S. circuit court, 9th circuit, southern district of California, southern division. Int. Com. Comm'n plaintiff, *v.* S. P. Co., *et al.*, defendants. Order allowing joint appeal by all defendants to the U. S. Supreme Court. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. P. F. Dunne, J. W. McKinley, T. J. Norton, E. E. Milliken, U. T. Clotfelter, 516 Conservative Life building, Los Angeles, Cal. Telephone main 1466. Attorneys for defendants.

1841 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Petition for Order Allowing Appeal.

To the Hon. Olin Wellborn, one of the judges of the above entitled court, presiding therein :

The above named defendant, Southern Pacific Company, feeling itself to be aggrieved by the decree made and entered by the above named court in the above entitled cause on September 20th, 1904, and amended September 22nd, 1904, being the decree on the merits therein :

Wherein and whereby, among other things, it is adjudged and decreed that the defendants herein and their officers, agents employés and servants are, from and after the making and entering of said decree, enjoined and restrained from continuing the violation or disobedience of an order of the Interstate Commerce Commission, and are enjoined and required to fully obey the same in all respects, the said order of said Interstate Commerce Commission requiring the said defendants to wholly cease and desist from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons or other citrus fruits from points in south-
1842 ern California to points on and east of the Missouri river and other eastern destinations are denied the right of designating for the transportation of their said property and having such prop-

erty transported over any of the defendants' established published joint or continuous lines or routes between any of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line and from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons and other citrus fruits from points in southern California to points on and east of the Missouri river for and during all of the time such rate or charge may be lawfully enforced over each and every of the established routes upon which the said rate or charge is in their published joint schedules or rates of transportation stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes, when specified by the shipper for the transportation of his property, is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants, or either of them *amy* determine;

Does hereby petition said court for an order allowing said defendant to prosecute an appeal from said decree and each and every part thereof to the Supreme Court of the United States for the reasons set forth in the assignment of errors annexed hereto and filed herewith.

That said defendant, Southern Pacific Company, prays that its petition for said appeal may be allowed and that a transcript of the record, proceedings and papers, upon which the said decree was made, may be sent to the Supreme Court of the United States under and according to the laws of the United States in such cases made and provided.

WM. F. HERRIN,
1843 P. F. DUNNE,
J. W. McKINLEY,
Attorneys for Defendant Southern Pacific Company.

(Endorsed:) No. 1039. In the United States circuit court, 9th cir. So. dist. Cal. So. div. The Interstate Commerce Commission, complainant, *vs.* The Southern Pacific Company, *et al.*, defendants. Petition for order allowing S. P. Co. to appeal to Supreme Court of U. S. S. P. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. Wm. F. Herrin, P. F. Dunne, J. W. McKinley, rooms 12–16 Rindge bldg., 254 So. Broadway, Los Angeles, Cal. Attorney- for def't S. P. Co.

1844 In the Circuit Court of the United States in and for the Ninth Judicial Circuit, Southern District of California, Southern Division.

INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* SOUTHERN PACIFIC COMPANY, ATCHISON, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, Sometimes Designated as Santa Fe Pacific Railway Company, and Southern California Railway Company, Defendants.	In Equity.	No. 1039

Assignment of Errors by Defendant Southern Pacific Company on Appeal to the U. S. Supreme Court.

Southern Pacific Company, defendant and appellant herein, hereby assigns error to the decree herein in the above-entitled cause, made and entered September 20, 1904, and amended September 22nd, 1904, in the following particulars:

1. Said circuit court was without jurisdiction, as constituted and acting herein, in and during the proceedings in this case, to hear and determine said cause.

2. The court erred in overruling the demurrer of this defendant to the petition and complaint herein of the above-named complainant.

3. The court erred in finding that the allegations of the complaint herein are true, except to the extent that such allegations are admitted in and by the answer of this defendant.

4. The court erred in making any findings in reference to any allegation of fact in the complaint herein, except to the extent of such allegations of fact as are involved in the lawfulness of
1845 the order of the Interstate Commerce Commission herein as made by said commission.

5. The court erred in holding that the routing provision in the joint tariff, mentioned in said decree, is an agreement and combination, or agreement or combination, for any pooling of any freights of any different or competing railroads, or is in any respect violative of section 5 or any provision thereof of the commerce act.

6. The court erred in holding that the order of the Interstate Commerce Commission, set forth in said decree, is a lawful order.

7. The court erred in decreeing that the defendants above named, or any or either of them, are severally or otherwise or at all, from and after the making and entering of said decree, enjoined and restrained from further continuing any violation or disobedience of the said order of said commission, and enjoining and requiring the defendants, or any or either of them, to fully obey such order in any respect or in all respects.

8. The findings and decree of the court herein as above complained of are contrary to the law of the land and the evidence in this case.

9. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision, were otherwise than in the exercise of their right and authority as arising by law in the premises.

10. The court erred in holding that the defendants, or any or either of them, in making and enforcing the said routing provision were otherwise than in the exercise of their contractual right and authority within and under the law in the premises.

11. The court erred in holding that the complainant was entitled to recover any costs herein from the defendants or any or either of them.

1846 Wherefore, this defendant prays the said decree be reversed.

WM. F. HERRIN,
P. F. DUNNE,
J. W. McKINLEY,
Attorneys for said Defendant, Southern Pacific Company.

(Endorsed:) No. 1039. In equity. In the United States circuit court, 9th cir. So. dist. of Cal. So. div. The Interstate Commerce Commission, complainant, *vs.* The Southern Pacific Company, *et al.*, defendants. Assignment of errors by Southern Pacific Company on appeal to the U. S. Supreme Court. Filed Oct. 26 1904. Wm. M. Van Dyke, clerk. Wm. F. Herrin, P. F. Dunne, J. W. McKinley, rooms 12–16 Rindge bldg., 254 So. Broadway, Los Angeles, Cal., attorney- for said def't.

1847 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity.

Bond on Appeal.

Know all men by these presents: That we, Southern Pacific Company, a corporation, defendant and appellant in above entitled cause, as principal, and Jacob Baruch and Chas. Seyler, as sureties, are held

and firmly bound unto the complainant above named in the above entitled action in the sum of one thousand dollars ($1,000), lawful money of the United States, for the payment of which, well and truly to be made, we hereby bind ourselves and each of us and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of October, 1904.

Whereas, on the 20th day of September, 1904, a decree was entered in the above entitled cause in the court aforesaid in favor of the complainant and against the defendants on the merits in said cause; and entered as amended in respect to costs in said court and cause on September 22nd, 1904; and

Whereas, this defendant is prosecuting an appeal therefrom
1848 to the Supreme Court of the United States and this bond is executed for the purpose of perfecting said appeal;

Now, therefore, the condition of the above obligation is such that if the said defendant and appellant, Southern Pacific Company, shall prosecute its said appeal to effect and shall answer all costs that may be awarded against it if it fails to make its plea good, then this obligation shall be void; otherwise, the same shall remain in full force and virtue.

SOUTHERN PACIFIC COMPANY,
By N. T. SMITH, Treasurer.
JACOB BARUCH.
CHAS. SEYLER.

UNITED STATES OF AMERICA,
State of California, City and County of Los Angeles, } ss:

Jacob Baruch and Chas. Seyler, being each duly and severally sworn, each for himself and not one for the other, says:

I am a surety upon the above undertaking. I reside in the city and county of Los Angeles, State of California, and am a householder therein, and I am worth the sum of one thousand dollars ($1,000) over and above all my just debts and liabilities in property situated in said State of California, exclusive of property exempt from taxation.

JACOB BARUCH.
CHAS. SEYLER.

Subscribed and sworn to before me this 24th day of Oct., 1904.

W. M. CASWELL,
[SEAL.] Notary Public in and for the City and County of Los Angeles, State of California.

1849 The foregoing bond is approved both as to form and sufficiency of sureties this 26th day of Oct., 1904.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, 9th cir. So. dist. of Cal. So. div. The Interstate Commerce Commission, complainant, *vs.* The Southern Pacific Company *et al.*, defendants. Bond on appeal. Filed Oct. 26 1904. Wm. M. Van Dyke, clerk.

1850 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039.	In Equity.

Order Allowing Appeal.

The petition of the above named defendant The Southern Pacific Company, having been filed for an order allowing an appeal in said cause from the decree entered therein on the merits on September 20, 1904, and as amended and entered September 22, 1904, in respect to costs, together with the assignments of errors, coming on this day to be heard,

The said defendant then and there tendered to the court its bond for damages and costs to operate as a supersedeas herein under section 1000 of the Revised Statutes of the United States, the said bond being in the penal sum of five thousand ($5,000) dollars, and sufficient as to form and sureties if the case were one for a supersedeas, and said defendant at the same time offered, in case the penal sum of said bond was not satisfactory to the court, to execute, tender to this court for acceptance and approval, and file a like bond, with good and sufficient sureties, in such greater penal sum as this court should require; but the court then and there refused to approve any supersedeas bond on such appeal.

Thereupon the said defendant, without waiving and still
1851 insisting upon its rights to have such bond approved and filed and to a supersedeas herein tendered to the court its bond for costs on such appeal in the sum of one thousand ($1000) dollars;

And now it is ordered that an appeal be and the same is hereby allowed from said decree, and that the said bond for costs, as so tendered, be and the same is hereby approved and directed to be filed herein.

And it is further ordered that a transcript of the record be forth-

with transmitted to the United States Supreme Court, said record t
consist of the pleadings, papers, evidence and files used upon th
hearing of said cause upon the merits in this court, and the journa
entries therein, together with the papers filed therein upon thi
appeal.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, ninth circuit, southern
district of California, southern division. The Interstate Commerce
Commission, complainant, *v.* Sou. Pac. Co., defendants. Order al
lowing appeal by S. P. Co. Filed Oct. 26 1904 Wm. M. Van Dyke
clerk. P. F. Dunne, J. W. McKinley, attorneys for defendants S. P
Co.

1852 In the Circuit Court of the United Sta-, — Circuit, Southern
District of Califo-, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *v.* THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.	No. 1039. In Equity

Stipulation.

It is hereby stipulated that but one record upon appeal contain
ing all appeals to the United States Supreme Court shall be prepared
returned and printed in the above entitled cause.

JOSEPH H. CALL,
Sp'l Ass't U. S. Att'y, Solicitors for Complainant.
W. F. HERRIN,
P. F. DUNNE,
J. W. McKINLEY,
Solicitors for Southern Pacific Company.
ROBERT DUNLAP,
T. J. NORTON,
Solicitors for All Other Defendants.

1853 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
v.
THE SOUTHERN PACIFIC COMPANY, THE Atchison, Topeka and Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
} No. 1039. In Equity.

Order.

Upon reading and filing the foregoing stipulation and good cause therefor appearing,

It is ordered that but one record upon appeal containing all appeals to the United States Supreme Court shall be prepared, returned and printed in the above entitled cause.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1039. U. S. circuit court, 9th circuit, southern district of California, southern division. Int. Com. Comm'n plaintiff, *v.* S. P. Co. *et al.*, defendants. Stipulation and order *re* record on appeal. Filed Oct. 26 1904 Wm. M. Van Dyke, clerk. P. F. Dunne, J. W. McKinley, T. J. Norton, E. E. Millikin, U. T. Clotfelter, 516 Conservative Life building, Los Angeles, Cal. Telephone main 1466. Attorneys for defendants.

1854 In the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, Topeka & Santa Fe Railway Company, The Santa Fe Pacific Railroad Company, Sometimes Designated as the Santa Fe Pacific Railway Company, and The Southern California Railway Company, Defendants.
} No. 1039.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing one thousand eight hundred and fifty three (1853) type written pages numbered from 1 to 1853 inclusive and comprised in four volumes, to

be a full, true and correct copy of the record, pleadings, opinions of the court, papers, evidence and files used upon the hearing of the above and therein entitled cause upon the merits in this court and of the journal entries and of all proceedings therein, together with the papers filed therein upon the appeals of said defendants, and that the same together constitute the transcript of the record on appeal to the Supreme Court of the United States in said cause.

I do further certify that the cost of the foregoing record is
1855 $895\frac{70}{100}$, the amount whereof is to be paid me by said appellants

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, this 14th day of December, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twentyninth.

[Seal U. S. Circuit Court, Southern Dist. Cal., 1886.]

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

Endorsed on cover: File No. 19,596. S. California C. C. U. S. Term No. 158. Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and Southern California Railway Company, appellants, *vs.* The Interstate Commerce Commission. File No. 19,597. Term No. 159. Southern California Railway Company, appellant, *vs.* The Interstate Commerce Commission *et al.* File No. 19,598. Term No. 160. Atchison, Topeka & Santa Fe Railway Company, appellant, *vs.* The Interstate Commerce Commission *et al.* File No. 19,599. Term No. 161. Santa Fe Pacific Railroad Company, appellant, *vs.* The Interstate Commerce Commission *et al.* File No. 19,600. Term No. 162. Southern Pacific Company, appellant, *vs.* The Interstate Commerce Commission. Filed January 11th, 1905. File No. 19,596, &c.

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Supreme Court U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1905.

SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SANTA FE PACIFIC RAILROAD COMPANY and SOUTHERN CALIFORNIA RAILWAY COMPANY, *Appellants*, vs. THE INTERSTATE COMMERCE COMMISSION.	No. 159.
SOUTHERN CALIFORNIA RAILWAY COMPANY, *Appellant*, vs. THE INTERSTATE COMMERCE COMMISSION et al.	No. 159.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *Appellant*, vs. THE INTERSTATE COMMERCE COMMISSION et al.	No. 160.
SANTA FE PACIFIC RAILROAD COMPANY, *Appellant*, vs. THE INTERSTATE COMMERCE COMMISSION et al.	No. 161.
SOUTHERN PACIFIC COMPANY, *Appellant*, vs. THE INTERSTATE COMMERCE COMMISSION.	No. 162.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SANTA FE PACIFIC RAILROAD COMPANY and SOUTHERN CALIFORNIA RAILWAY COMPANY, APPELLANTS.

ROBERT DUNLAP,
THOMAS J. NORTON,
Attorneys for Atchison, Topeka & Santa Fe Ry. Co.
Santa Fe Pacific Railroad Co. and
Southern California Railway Company.

GARDINER LATHROP,
Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SANTA FE PACIFIC RAILROAD COMPANY and SOUTHERN CALIFORNIA RAILWAY COMPANY, *Appellants*, *vs.* THE INTERSTATE COMMERCE COMMISSION.	No. 158.
SOUTHERN CALIFORNIA RAILWAY COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION et al.	No. 159.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION et al.	No. 160.
SANTA FE PACIFIC RAILROAD COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION et al.	No. 161.
SOUTHERN PACIFIC COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION.	No. 162.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SANTA FE PACIFIC RAILROAD COMPANY and SOUTHERN CALIFORNIA RAILWAY COMPANY, APPELLANTS.

ROBERT DUNLAP,
THOMAS J. NORTON,
Attorneys for Atchison, Topeka & Santa Fe Ry. Co
Santa Fe Pacific Railroad Co. and
Southern California Railway Company.

GARDINER LATHROP,
Counsel.

TABLE OF WITNESSES.

W. G. BARNWELL— Los Angeles. Assistant General Freight Agent, Santa Fe (279).

WM. A. BISSELL— San Francisco. Assistant Traffic Manager on the Coast of The Atchison, Topeka and Santa Fe Railway System, including The Atchison, Topeka and Santa Fe Railway Company, Southern California Railway Company and Santa Fe Pacific Railroad Company (862).

EDW. CHAMBERS— General Freight Agent of The Atchison, Topeka and Santa Fe Railway Company Coast Lines, with headquarters at Los Angeles (887).

P. J. DREHER— Manager San Antonio Fruit Exchange at Pomona, which shipped 5,000 cars up to 1903 and has $40,000 invested in orange groves (227).

E. T. EARL— President Continental Fruit Express, President Earl Fruit Company (152).

JAMES A. EVERIST— Riverside. Shipper of 50 to 75 carloads, with packing house on line of Santa Fe only (273).

W. G. FRASER— Riverside. Secretary Arlington Heights Fruit Company (857).

ARTHUR GREGORY— Redlands. Grower and shipper of citrus fruit (851). Also shipper of dried fruit, honey, nuts, etc. (856).

I. L. HIBBARD— Superintendent of the Southern California Railway Company from 1897 to 1903, and Superintendent of the Albuquerque Division (420 miles) of the Santa Fe Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company between Seligman, Arizona and Albuquerque, New Mexico (906).

LELAND LYON— Fruit grower and shipper (841).

SETH MARSHALL— San Bernardino. President Highland Orange Growers' Association (862).

C. E. MAUD— President Consolidated Forwarding Company (818).

CHAS.G.MCKINLEY—Secretary Orange County Fruit Exchange (840).

D. W. MCLEOD— Member Riverside Navel Orange Company, which is branch of Southern California Fruit Exchange (171). Handles about 200 cars annually (236), shipping through California Fruit Agency (242).

JAMES MILLS— Superintendent Arlington Heights Fruit Company (225).

E. S. MOULTON— Packer and shipper (859). Secretary Consolidated Forwarding Company, one of the two companies which began this litigation (13).

E. M. NADAL— Ex-employe Southern Pacific Company, who purloined from employer private documents. Running Traffic Bureau for prosecution of claims against railroads (331–2–3).

A. H. NAFTZGER— President and General Manager Southern California Fruit Exchange (one of the two organizations which began this litigation before the Commission p. 35) since its organization in 1895, the business of which is to market citrus fruits of twelve exchanges in seven counties in Southern California, representing in 1900 about 1,700 orange growers (pp. 158–9) and handling about 75 per cent. of Southern California output. All during 1895 and 1896 had charge and was President of Overland Fruit Despatch, a car company operating refrigerator cars particularly for Southern California Fruit Exchange (which held stock in Car Company, p. 810), of which he was President, and which refrigerated probably 1,000 cars (161). Ceased to operate Overland Fruit Despatch in the summer of 1897, because Southern Pacific and Santa Fe companies refused his request for renewal of contract, they claiming they had all cars they could use to advantage (162–3). His purpose in organizing Overland Fruit Despatch was to get mileage from Railway Companies and also profit from refrigeration, and he did get mileage sometimes as high as two cents a mile (813). Later Manager California Fruit Agency (979).

W. G. NEIMEYER— General Agent at Chicago of Southern Pacific Company in charge of handling citrus fruit diversions (965).

GEO. A. PARKYNS— Los Angeles. Assistant General Freight and Passenger Agent Southern Pacific.

O. L. RULE— Citrus fruit diversion clerk of Santa Fe at Los Angeles (971).

A. G. STEARNS— Shipper to the extent of 225 to 300 cars a year (254).

W. SPROULE— San Francisco. Freight Traffic Manager Southern Pacific Lines (281).

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SANTA FE PACIFIC RAILROAD COMPANY and SOUTHERN CALIFORNIA RAILWAY COMPANY, *Appellants*, *vs.* THE INTERSTATE COMMERCE COMMISSION.	No. 158.
SOUTHERN CALIFORNIA RAILWAY COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION et al.	No. 159.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION et al.	No. 160.
SANTA FE PACIFIC RAILROAD COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION et al.	No. 161.
SOUTHERN PACIFIC COMPANY, *Appellant*, *vs.* THE INTERSTATE COMMERCE COMMISSION.	No. 162.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT.

This is an appeal from a decree of the Circuit Court of the United States, Southern District of California, enjoining obedience on the part of the appellants to an order of the Interstate Commerce Commission, which decree was made in a suit instituted by the commission, under Section 16 of the Interstate Commerce Law, against all the appellants in said court.

The petition or bill in equity filed by the commission August 21, 1902, in said court, to enjoin obedience to its order made upon the two complaints, filed before said commission, one by the Consolidated Forwarding Company of California, and the other by the Southern California Fruit Exchange of California, has attached as exhibits thereto and as parts thereof copies of said complaints, the answers of the railway companies, the report of the commission, and its order founded thereon. (Transcript, pp. 8 to 85.)

The history of this proceeding in the light of the evidence and the facts found by the commission is remarkable. It appeared that for several years prior to 1900 large shippers of citrus fruit in southern California, notably the two complainants before the commission, were in the habit, either directly, or through the instrumentality of private car lines, of receiving rebates from eastern connections of the appellants, over whose lines shipments were routed generally by such private car lines. The matter became so intolerable that the appellants, who were initial carriers of this product, conceived the plan that as shipments to the east would have to be made under joint tariffs, if they could secure to themselves the right to route as a condition of making or continuing in effect such joint tariffs, they would be able to eradicate the evil by notifying their connections that thereafter they would see to the routing and that neither shippers nor private car lines could sell the same for rebates; that they would see that the shipments thereafter were not routed over lines which were found to be paying these unlawful rebates. They, therefore, succeeded in establishing as a part of the joint tariffs such a provision, which was made effective January 1, 1900. As found

by the commission, the payment of unlawful rebates then ceased.

The two complainants before the commission were shown to have largely profited by these illegal practices, and the enforcement of the routing provision cut off further opportunity for such profits. Thereupon, on March 3, 1900, they filed two complaints before the commission against the appellants, which complaints are identical in their charges. Therein they alleged that they were engaged in the business of handling and transporting from various points in southern California to eastern markets oranges, lemons and other fruits and products grown in southern California; that the Southern California Railway, the Santa Fe Pacific Railroad and the Atchison, Topeka & Santa Fe Railway constitute a through transcontinental railroad between National City and Chicago, with main and branch lines passing through Los Angeles and other points in southern California; that the Atchison Railway at Chicago and other intermediate points, makes connections with divers other railroads terminating at various eastern and Atlantic points; that the Southern Pacific Company operates a line of railroad between San Francisco, by way of Los Angeles and other points in the state, and El Paso, in Texas, to New Orleans, at which last-mentioned point and intermediate points it makes connections with divers and sundry lines of railroad terminating at various eastern and Atlantic points; that it also operates a line of railroad from Los Angeles, by way of Sacramento, and other points in California, to Ogden, at which point it makes connections with divers railroads between the City of Ogden and eastern and Atlantic points;

That the principal industry in southern California

is the growing and marketing of oranges, lemons and other fruits, the larger portion of which can only be disposed of in the eastern markets; that they require rapid transit and can only be transported in refrigerator cars; that defendants, disregarding their duty to furnish refrigerator cars, and for the purpose of giving the Continental Fruit Express, Edwin T. Earl, and the Earl Fruit Company an undue preference over complainants and other shippers, entered into certain contracts with the Continental Fruit Express to operate, for a term of years, over their line of railroad, certain refrigerator cars; also that contracts were entered into with the Santa Fe Refrigerator Line and Armour & Company to operate refrigerator cars, and this was done for the purpose of giving an undue preference over complainants and other shippers;

That defendants have refused to furnish complainants and other shippers other refrigerator cars, but have compelled them to use refrigerator cars furnished by the Continental Fruit Express, Santa Fe Refrigerator Line and Armour & Company;

That said private car lines are permitted by the railroad company to establish, in addition to the regular tariff established and published by the defendants, a refrigerator tariff, which was made a charge against shipments under refrigeration; that such tariff charges are largely in excess of the actual cost of refrigeration and yield large profits to the private car lines.

It is also charged on information that the Southern Pacific Company and the Atchison Company, for itself and the Santa Fe Pacific and the Southern California Railway Companies, prior to January 1, 1898, entered into an agreement and combination to pool and divide between said Southern Pacific Company and the de-

fendants, composing the Santa Fe System "the aggregate or net proceeds of the earnings of all the business done by any of said defendants, originating in southern California." That said agreement and combination is still in force.

It is then claimed that shippers had the right to select the route over connecting lines over which their shipments should be carried, but that for the purpose of carrying out and making effective the agreements with the private car lines and the aforesaid pooling compact between the Southern Pacific Company and the Santa Fe Company, defendants established a rule whereby the initial carrier reserved to itself the absolute and unqualified right of routing beyond its own terminal all shipments of citrus fruit in carload lots. (The rule referred to is a provision in joint tariffs made by the initial lines with all eastern connections, naming the flat freight rate of $1.25 per hundred pounds to all points in the United States east of the Missouri river, and giving as the condition thereof to the initial carriers the absolute and unqualified right to route over connecting lines.)

General complaint is made of delay in shipments and on information it is charged that by reason of the pooling agreement the several lines of railroad connecting with defendants' lines are promised and guaranteed by the initial line a proportion of the business or a division of the business, and that consequently all competition for the carriage of said products is destroyed, and the connecting carriers are not obliged to secure and hold the business by reason of good service.

Complaint is then made that while the volume of the traffic has increased and the market price of lemons

and oranges decreased there was no change made in the $1.25 per hundred-weight rate and that such rate was excessive. (Transcript, pp. 13 to 19 and 35 to 41.)

Answers were filed by the railroad companies denying the unlawful charges and setting up various matters, among others, that the routing provision was adopted to break up the unlawful practice of rebate paying by connecting lines. After taking a lot of testimony the commission made a decision holding the routing provision of the joint tariffs to be illegal, mainly on Section 6 of the law. (The lower court based its decision entirely on Section 5.) Upon the other questions involved they regarded the evidence *insufficient* to justify a decision or determination, and, therefore, three questions were reserved for further consideration and proof, viz.: First. Whether defendants pool their citrus fruit traffic or divide the earnings therefrom; Second: Whether the blanket rate of $1.25 per hundred pounds was unjust or unreasonable; and Third: Whether the statute applies to charges for refrigeration (See Transcript, pp. 55 to 77.) Mr. Commissioner Knapp dissented. (See his opinion, Transcript, pp. 77 to 83.) The findings of the commission will be referred to hereafter.

Thereupon the commission formulated the following general order, in substance requiring appellants to route all shipments as requested by shippers at the joint rate made in the joint tariffs but to desist from enforcing the condition or provision concerning routing, upon which the joint rate was made by such initial carriers. It is as follows (See transcript, pp. 83 to 84):

"The Consolidated Forwarding Company v. The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company,	No. 575.
The Southern California Fruit Exchange v. The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company,	No. 576.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and the commission having, after due investigation, made and filed a report and opinion herein containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

It is ordered and adjudged that the defendants, The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, The Santa Fe Pacific Railway Company, and The Southern California Railway Company, be, and they severally are hereby, *notified and required* to wholly *cease and desist* from and after the twentieth day of June, 1902, from maintaining or enforcing a rule or regulation *whereby shippers of oranges, lemons, or other citrus fruits* from points in southern California to points on and east of the Missouri river and other eastern destinations are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established and published joint or continuous lines or routes between any of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line.

It is further ordered and adjudged that said defendants, The Southern Pacific Company, The Santa Fe Pacific Railway Company, and The Southern Cali-

fornia Railway Company, be and they severally are hereby, *notified and required* to wholly *cease and desist* from and after the twentieth day of June, 1902, from failing and refusing as initial carriers to keep open for the *use of the public* their published rate or charge for the transportation of oranges, lemons, and other citrus fruits from points in Southern California to points on and east of the Missouri river, for and during all of the time such rate or charge may be lawfully in force, over each and every of the established routes upon which the said rate or charge is in their published joint schedules or tariffs stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes when specified by a shipper for the transportation of his property is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants, or either of them, may determine.

And it is further ordered that a *notice* embodying this order be sent forthwith to each of said defendants, together with a copy of the report and opinion of the commission herein, *in conformity with the provisions of the fifteenth section of the Act to Regulate Commerce.*"

It appears from the testimony in the lower court that the provision in the joint tariff, effective July 20, 1903, and which superseded the provision in the tariff referred to in the report of the commission, reads as follows:

"The joint tariffs herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus, as well as upon the other conditions, provisions and stipulations hereinafter set forth." (Transcript, pp. 357, 358 and 365.)

Defendants refusing to comply with the order of the

commission this suit was instituted to enforce obedience.

A table of witnesses is prefixed so that the court may be the better able to judge of the value of the testimony as in the statement of facts the name of the witness is cited in each instance. References in parentheses are to the top pages of the record.

A Startling Legal Conclusion.

In this case there is presented the anomaly of an implied indorsement and justification by the Interstate Commerce Commission and by the Circuit Court of the United States of one of the most open and gross systems of rebate-giving that has ever been known. (Rec., pp. 66, 1039.)

The commission found that a single shipper, the Southern California Fruit Exchange, one of the two organizations that began this litigation (35), had received in rebates from 1895 to 1899 the enormous sum of $174,491 (66 and 80); also (71) that for seven years previous to 1900 rebates had been generally paid by private car-line companies and by the eastern connections of these defendants from $15 to $25 a car; that the payment of rebates had been well known and had been generally made to all shippers when the car was refrigerated as well as when it was not, though the rebate was greater when refrigeration was used, the average rebate being $15 when the car was *not* refrigerated and $25 when it was; and *that the eastern connections of the defendants were willing to pay these rebates to have traffic routed over their lines.*

Notwithstanding this extraordinary and deplorable condition the commission, forgetting the provisions of Sections 6 and 10 of the law, the enforcement of which is imposed upon them as a special duty, gave this unlawful practice a quasi indorsement as follows (66):

"As the practice of paying these rebates was general the shippers came to regard them as a part of their legitimate returns from the orange business."

Again the commission said (71):

"Some of this money was paid by the car lines and some of it by eastern connections of the carriers, but however paid these allowances or rebates must be regarded as deductions from the amount paid for transportation."

In its conclusions the commission considered that the suppression by the initial carriers, under their assumption of the right to route the business beyond their termini, of the practice of rebate-giving had the effect to "hold up rates by unlawful methods." (75.)

In line with this strange reasoning the Circuit Court of the United States said (1039):

"But if there is in the present case any fact emphasized and made specially prominent by defendants it is that fierce rivalry existed between their eastern connections before their routing rule was adopted."

We shall show presently that this "fierce rivalry" consisted wholly in the cutting of the published tariffs on file with the commission and in the giving of rebates by the private car companies and the eastern connections of the defendants for the purpose of securing traffic.

Again the Circuit Court said in its opinion (1038):

"But it is said that under the present routing ar-

rangement the initial carriers look to efficiency of service in apportioning freights and there is competition in every respect except rate. The exception is fatal to the argument, because the prohibition of Section 5 against pooling freights protects competition in rate as well as in service."

The foregoing statement is erroneous in that it assumes that, because the initial carriers dictated the routing beyond their termini, the joint tariff rate of $1.25 on citrus fruit to all points east of the Rocky Mountains could not be altered. The fact is that the conditions respecting the tariff rate were exactly the same after the initial carriers assumed control of the routing on January 1, 1900, that they had been before. No eastern connection was capable, either before or after January, 1900, of publishing a rate from the Pacific Coast to points east of the Rocky Mountains. Such a tariff could be promulgated only by agreement. Before the routing rule was adopted either the Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway System (commonly called the Santa Fe Company) could have made an agreement with eastern connections for a different tariff at a dollar rate. But that is true today and has been ever since the initial carriers took charge of the routing. There is absolutely not a syllable in the record to show any agreement or understanding to prevent the Santa Fe Company from promulgating with its eastern connections a joint tariff with a reduced rate; nor is there a syllable to show that the Southern Pacific Company has been since January, 1900, in any way bound not to promulgate with its eastern connections a tariff at a

reduced rate. On the contrary, it was positively testified (221) by W. B. Biddle, Traffic Manager of the Santa Fe at Chicago, that either the Santa Fe or the Southern Pacific was free to publish any tariff that it might choose to put out. And it remains a fact which cannot be gainsaid and which is a concrete refutation of the claim that there could not be a competition as to rate, that since the routing rule was put in force the citrus tariff was reduced from $1.25 to $1 on lemons (Biddle, 221; Barnwell, 454).

For all of the record the United States Circuit Court said again (1039):

"Since defendants' plan to maintain their rates through the operation of the routing rule necessarily involved the destruction of competition, it is idle to say that that result was not intended by them. The sole immediate aim of the routing rule was to put the shippers of citrus fruit in a position where their patronage could not possibly be competed for by defendants' eastern connections."

The only "destruction of competition" that resulted from the routing rule enforced by the Santa Fe Company and the Southern Pacific Company was the absolute abolition of rebate-giving by eastern connections and private car companies that were striving for the traffic. If that is lawful "competition," then the Interstate Commerce Law has been misunderstood and misinterpreted for 18 years. The initial carriers made the announcements to eastern connections that business would not be routed over any of their lines found violating the Interstate Commerce Law by cutting the published tariffs through the giving of rebates, and very naturally and logically those connections con-

cluded that further attempts to buy business by illegitimate methods would be futile.

Again the court says on the subject of "competition" (1049):

"The destruction of competition was not only inevitable from the rule but so plainly heralded by its terms that no gift of prophecy was needed to foretell the result."

Again it says (1040):

"The truth is, as testified by numerous witnesses, that the chief purpose of defendants in entering into this routing contract was to maintain the joint tariff rates."

Is not that a lawful purpose? And is it not unlawful not to maintain the joint tariff rates while in force? It was because the joint tariff rates had been cut by rebates with great discrimination to shippers, as we shall presently show, that the initial carriers published November 15, 1899 (455 *et seq.*), a joint tariff containing this provision:

"In guaranteeing the through rate named herein the absolute and unqualified right of routing beyond its own terminus is reserved to the initial carrier giving guaranty."

On January 1, 1900, another joint tariff was published containing the same provision (466 *et seq.*). The effect of the publication of these tariffs, as we shall hereafter more fully show, was immediately and completely to put an end to the giving of rebates, as the eastern connections of these defendants clearly saw that the traffic which they might attempt to secure by rebates would not be delivered to them.

In its opinion on the merits the Circuit Court said (1040):

"Established rates could not be maintained while defendants' eastern connections were able as competitors to directly approach shippers for their freights, and the routing rule was resorted to for the purpose of destroying that competition."

Why, in good conscience, should not "that competition" have been destroyed? Was it not the purpose of Congress in enacting the Interstate Commerce Law, and in amending and strengthening it, to destroy "that competition"? Was it not the country-wide complaint about "that competition" which caused the enactment of the statute? And is it not the complaint to-day about "that competition" which is moving Congress to further legislation?

Farther on in this statement we shall show that there was indeed competition of every lawful kind, and the only affect of the action of the initial carriers (defendants) was completely to wipe away an unlawful competition which had become a noxious stench in the traffic circles of the country.

We point out here the strange and startling theories of the Interstate Commerce Commission and of the Circuit Court respecting "competition" for the purpose of stating as a preface to the evidence which we are about to review that the claims made by them in the language quoted are not only unwarranted but also that they are directly contrary to the evidence produced.

A Few Facts Historical.

In 1886 these defendants and the Southern Pacific Company, upon the request of the growers and shippers of citrus fruits in Southern California, for the

purpose of nurturing a young industry, arranged with their eastern connections for a rate of $1.25 a hundred pounds on citrus fruits (oranges, lemons, grape fruit, etc.), from Southern California to all points east of the Rocky Mountains, the rate theretofore having been $1.50. The rate was made by mutual agreement of the carriers before the Interstate Commerce Law became effective and applies practically to every point in the Union. (Morton, 136.) The rate of $1.25 was very low and extended to the Atlantic seaboard to meet the importation of Mediterranean oranges against which at that time there was not sufficient duty, especially as the California orange production was not enough to hold the market against the Mediterranean orange. (Sproule, 941.)

Under this freight charge there has been developed in Southern California citrus fruit groves covering 88,000 acres (Dreher, 229), which is about all that the water supply will suport. (Sproule, 946.) Of the 88,000 acres about 27,000 are tributary to the Santa Fe and 27,000 to the Southern Pacific, the remaining 34,000 being served by both lines jointly. (Sproule, 946.)

The Santa Fe and the Southern Pacific have each about 350 miles of railroad in the citrus belt. (Chambers, 179; Sproule, 286.)

In 1885 only a few hundred carloads of citrus fruit were shipped to eastern points. In 1890 there were approximately 5,000 carloads and in 1898-9 the shipments were considerably over 15,000 carloads. (Naftzger, 159.)

Earl testified he invented a ventilator device and

applied it to some refrigerator cars in 1891, his object being to provide cars that would transport the Earl Fruit Company's product to destination in good condition. He arranged with the Santa Fe people, who were then building some refrigerator cars of an old pattern for the California business, to permit him to put his device into 100 of their cars at his expense, with the understanding that as far as possible the Earl Fruit Company should be allowed the use of the cars. The cars came to California in January, 1891, and were immediately put to use carrying oranges. It was soon demonstrated that the car was a complete success and that it overcame the difficulties shippers had contended with for years. All shippers wanted the car. He concluded in view of the demand to build some cars and own them, but when he put this conclusion into effect and endeavored to arrange with the California railroads they demanded that the cars should be furnished to all shippers on equal terms. That meant that instead of building 200 or 300 cars for the business of the Earl Fruit Company he should have to furnish 1,000 or more. He then incorporated the Continental Fruit Express for the building of cars and engaged in the business on a large scale, soon having 1,500 cars in operation. (Earl, 843-4.)

The conditions in the citrus traffic had been growing worse with respect to rebates until in 1899 it had become intolerable. At first certain roads that had not been sharing in the orange business by reason of their location came into Southern California and offered shippers a certain number of dollars per car for every car that would be routed over their roads. The effect was to divert the business from the lines that had for-

merly been getting it and which were in the natural direction that the traffic would take, being the lines that could render the most direct service and lines with which arrangements had been made to refrigerate cars. In these circumstances the car line companies determined to go in and control the movement themselves and secure for their respective cars a share of the traffic. (Sproule, 914-5.)

The private car companies received from the connections of the defendants a certain rate of mileage for cars routed over such connections. The regular and prevailing car mileage paid by carriers hauling other than their own equipment was secretly increased to these car companies by certain eastern connections in consideration that the business would be routed their way. From this mileage and from the secret excess mileage thus allowed the car companies had a fund which they employed to buy of the shippers the privilege of routing. In addition to the mileage mentioned the car companies received for icing $60 to Missouri River points, $75 to Chicago and $90 beyond. (Naftzger, 164.)

It will appear from the testimony hereafter reviewed that the transportation rates and the icing tariff were paid in full by shippers and that subsequently a part of these charges were returned in the form of rebates.

From these two sources the car companies procured enough money to acquire by purchase absolute dominion over the business, which they exercised with such effect and thrift that in 1899 there was not a carload of citrus fruit going out of Southern California upon which someone did not get a rake-off. (Sproule, 921.)

These rebates were not paid by any of the defendants. The defendants published with the commission a tariff and did everything in their power to have the law which it expressed respected. One of the very conditions which the Interstate Commerce law was intended to suppress, namely, the advantage which one shipper enjoyed to the prejudice of another, here existed in more than original rottenness. It was not costing any two shippers the same price to get citrus fruit to eastern markets. Many got no rebates at all, others got all they could secure, while a large percentage of most of the rebates went into the pockets of middlemen (828), who blandly testified without a blush that even where they had no interest at all in the fruit which they marketed they put the rebates in their pockets and gave to the men who toiled to grow the product not a dollar. (Maud, 823.)

This ulcer had been growing for many years.

The Atchison, Topeka and Santa Fe Railway Company, which was operating not only its own line, extending from Chicago to Albuquerque, but also as a part of its system the line of the Santa Fe Pacific Railroad Company, extending from Albuquerque westward to Barstow, California, and the line of the Southern California Railway Company, extending southward from Barstow into Southern California and the citrus region, is generally spoken of in the testimony as the Santa Fe. Although there are three defendants on this brief, the real and practically the only defendant, except the Southern Pacific, is The Atchison, Topeka and Santa Fe Railway Company.

The Southern Pacific Company has a line extending from Los Angeles and other Southern California

points northward to San Francisco and Sacramento and thence eastward to Ogden, Utah; and also another line from Los Angeles and Southern California points eastward to El Paso, Texas. The Santa Fe Company and the Southern Pacific Company were the only railway carriers out of the citrus region.

About 60 per cent. of the citrus traffic went to points east of Chicago and therefore, everything else being equal, the Santa Fe should have had the entire haul to Chicago on all business originating on its line and destined to Chicago or beyond. But under the rebate system connections going out to Albuquerque, El Paso, Pueblo, Denver, Burton in Kansas, Kansas City and other junction points purchased the traffic by means of rebates and took it from the rails of the Santa Fe, notwithstanding that its route to Chicago was the most direct. The practice was even carried so far that business originating on the Santa Fe rails in California never went upon that line at all, but was carried instead north to Ogden or southward to El Paso because the connections purchasing traffic at those Southern Pacific points were bidding higher than those at Santa Fe junction points. This was not only depriving the Santa Fe of business to which it was justly entitled and which by a special rate to eastern markets it had greatly helped to nurture and develop, but it was also taking off the rails of the Santa Fe its own equipment specially constructed and purchased for this business, putting it into the care of stranger lines which paid little attention as to whether the empty cars were ever returned.

The effect upon the Southern Pacific was similar, business which originated on its line being taken from

it before the haul to which it was entitled was complete and the special equipment which it had provided being scattered beyond its control throughout the United States.

In this situation the Santa Fe and the Southern Pacific Companies, after having fruitlessly tried all other means to suppress the rebate iniquity, decided upon the plan of revoking the existing joint tariff and publishing a new one containing the provision that the through joint rate of $1.25 was given and guaranteed upon the condition that the initial carrier should specify the route the car would take, the intention being, as it was announced to eastern connections, to withhold the traffic from any connection that should be discovered giving rebates. Before this tariff was put out in November, 1899 (to take effect January 1, 1900), the eastern connections were informed of what was coming and were told that no carrier would be made a party to the joint tariff until it had given its assent to the arrangement. As was expected, all the connections were glad to be ridded of the system of paying toll to intermediaries under which they had been laboring. Moreover, any connecting carrier that might have been disposed to continue paying rebates well knew that there was no certainty of its getting what it might buy. Therefore it did not buy. The rebate plague disappeared instantly and absolutely; and it will have disappeared forever if this court will declare the proposition that as carriers are under no obligation to publish joint tariffs, their entering into such a joint agreement may be made upon terms, especially where it is open to the shipper to accept the terms of the joint tariff or ship under other tariffs.

Very promptly, on March 3, 1900, the California Fruit Exchange, whose president and general manager, Mr. Naftzger, testified (814) that he had received from $2,000 to $3,000 a month in rebates, and whom the Commission found (66) to have received in four years $175,000, and who stated on the witness stand (858) that whether any of the money that he got as rebates did not pass beyond his own pocket was none of the questioner's business, and who refused as a witness (859) to answer as to how much "graft" he really did get—filed a complaint as heretofore stated (35) before the Interstate Commerce Commission against the Santa Fe and the Southern Pacific Companies.

On the same date, evincing equal promptitude, the Consolidated Forwarding Company, whose president, C. E. Maud, testified (832) that one of the reasons he wanted to route the fruit was that it yielded rebates; that his desire to get rebates to some extent weighed in his estimate of the value of the routing privilege (824); that he had sought rebates and that they had been tendered to him (828); that the middlemen got the rebates and not the man who grew the fruit (828), also filed a similar complaint (13) before the Commission against the Santa Fe and Southern Pacific Companies.

These complaints unfolded a long tale of woe to the effect that since the initial carriers had begun routing, which was within two months, the transit was slow, the journeys were roundabout, the icing facilities inadequate, that the special attention which the cars required in the way of ventilating and taking temperature was insufficient, that the charges for refrigeration were exhorbitant, that the initial carriers had combined

to pool between them the proceeds of the citrus traffic, and so on almost without end. Answers filed (41 *et seq.*) by the defendant companies denied the allegations stated.

Hearing was begun in the two cases, which were consolidated, at Los Angeles, on March 30, 1900. (10.) On April 19, 1902, the Commission made a report in writing setting forth its conclusions and findings of fact (55, *et seq.*) and making its order (83-4) requiring the defendants to cease and desist from enforcing the routing rule and practice.

It was stipulated in the suit in the lower court to enforce this order (146), that the complainant and the defendants might incorporate into the record such testimony as they might desire which had been heard by the commission; and thereafter many witnesses were examined, chiefly on behalf of the defendants.

On June 1, 1903, the court rendered an opinion (132 Fed., 829) on the final hearing (1024), in which it eliminated questions that had been considered by the commission and stated the issue for decision as follows (1034):

"The question here presented is not whether there was a tonnage pool between the connecting carriers to which the defendants, although they promoted its ends through the use of the routing rule, were not parties, as found by the commission (see my opinion herein on demurrer, 123 Fed. Rep., 602), nor whether there was a traffic pool between the defendants to which the connecting carriers were not parties, which was one of the issues—the commission, for lack of satisfactory evidence, retained for further investigation, but whether or not the routing provision which the evidence adduced on final hearing shows and the answers of the defendants admit to have been part of the agree-

ment between the defendants themselves and their eastern connections, and pursuant to which their subsequent joint tariffs were filed with the commission, is itself a contract or combination for the pooling of freights."

The court reached the conclusion (1046) "that the routing contract here in controversy does so apportion freights among the defendants' eastern connections and is essentially such a pool."

Thereupon the defendants filed a motion for a supersedeas and asked that the injunction be suspended pending appeal (1062), which motion was denied. (1063.) Accordingly, the defendants jointly and each of them separately perfected appeals to the Supreme Court of the United States. (1064 *et seq.*) Assignments of error were filed (1071 *et seq.*) by each of the defendants.

For the convenience of the court we shall state pretty fully the substance of the evidence on the various matters.

The Rebate Scandal.

Under this heading we purpose to show:

1. That before the initial carriers assumed control of the routing the giving of rebates was open, notorious and discriminatory, small shippers being the worst sufferers.

2. That the sole purpose of the initial carriers was to put an end to this unlawful and discriminatory practice.

3. That the practice was quickly and completely stopped, placing all of the shippers on the same footing, as soon as the initial carriers assumed the right to route.

FIRST.

As showing that before the initial carriers took control of the routing the giving of rebates was open, notorious and discriminatory, and the small shippers were the worst sufferers, we will appeal to the record.

The commission found from the testimony that rebates had been paid for a period of at least seven years previous to 1900, amounting generally to from $15 to $25 a car, some of the money being paid by the private car line companies and some by eastern connections of the initial carriers, the defendants. (71.)

It was also found that the average rebate was $15 when the car was not refrigerated and $25 when it was under ice, and that the eastern connections of the defendants were willing to pay rebates, or their shares of them, to have traffic routed over their lines. (66.)

It was also found that one of the complainants that began this proceeding before the commission had received in illicit rebates during four years $175,000. (80.)

The rebate varied from $10 to $40 a car. The effect of rebate-giving was that it diverted from the Santa Fe lines to the lines of connections offering rebates traffic which the Santa Fe would otherwise have had. (Morton, 120-1.)

After making the best terms they could with the shippers for a consideration the car line companies went to connecting carriers and sold the business to the highest bidder. (Morton, 122.)

A. H. Naftzger, president and manager of the South-

ern California Fruit Exchange, one of the two companies which instituted this proceeding before the commission, gave some decidedly interesting testimony:

Prior to 1899 I do not think the tariff rates for refrigeration were very stiff. There was usually an opportunity to get something on the side. So far as we (the Southern California Fruit Exchange) were concerned I do not think we ever paid tariff on refrigeration. We received all the way from 10 to 25 per cent. discount on the refrigeration price of the car line company. I do not mean discount on the railroad tariff but on the refrigeration. All the car lines we ever used in our business made these allowances. (Naftzgar, 165.) The allowances were variable, ranging from 10 to 25 per cent. on the refrigeration rates. We paid for refrigeration $60, $75 and $90 in addition to the regular railroad tariffs and on this refrigeration charge we received the discounts mentioned, not on the railroad tariff. These rebates were made by all the car lines in the business. (Naftzger, 803-4.) We paid the full refrigeration tariff and then got back a rebate. (Naftzger, 806.) We had an understanding with the car line companies and made the best arrangement we could to get rebates. (Naftzger, 807.) Part of the time the car line companies said that if we would allow the business to go over certain lines they would give us a wider range and allow us so much more. (Naftzger, 808.) The practice of giving rebates dates back to my first experience along in 1892 and it has been in vogue until now (1900). The fixing of the rebates at 10, 15 and 25 per cent. of the icing charges was done through the bearing down qualities of the man who was getting it, I suppose. There was no uniformity about it. It was not an open reduction. Pretty nearly everybody got it that went after it. I always did. (Naftzger, 811.)

There was a larger allowance on the long hauls than on the short hauls; it was not a percentage; it was generally an even proposition of $5, $10 or $15, as the case might be, on a car. It was arranged through

an understanding with the car line companies at the beginning of the season that the use of those particular cars would secure that allowance on refrigeration, the understanding being between the shipper and the car line. It was not taken off the freight that was paid; it was in the shape of a refund after the refrigeration had been paid to the car line company. That was the only way to be done and not make an open reduction. In that way it was not known to all shippers and some of them got caught on the full rate, I presume. I suppose the car line companies did not want all shippers to know it because they did not want to give up if they did not have to. Secrecy was always enjoined by the car lines and generally it was a confidential proposition, the car lines paid the money back. The railroads did not have anything to do with it so far as the shipper was concerned, no matter what road it went over. (Naftzger, 812.)

Although the car line companies paid the rebates some of them would pay more back of the shipments traveled over certain lines. That usually had relation to connecting lines, not the initial lines. The *car company dictated the terms to the eastern connections to a certain extent*, I presume. (Naftzger, 813.) One of the advantages in our controlling the routing was in having shipments go over lines that would pay a cent a mile each way instead of over roads that would pay only three-quarters of a cent a mile. (Naftzger, 814.)

I think we sometimes received in rebates $2,000 or $3,000 a month. We *got rebates even where there was no refrigeration, but I never inquired where the money came from.* We got two cents a mile whether refrigerated or not and it came in every case from the car company. I cannot say that we ever received anything from a railroad company. (Naftzger, 814.)

I *have not any books that will show this because these were not accounts that we were interested in as a relic.* (Naftzger, 816.)

The rebates paid to me were turned over to the various fruit exchanges which I represented. (Naftzger, 817.)

Practically during all of the last five years rebates were paid by the different car line companies as I have described where there was no refrigeration as well as where there was. (Naftzger, 817.)

"Q. Have you ever got any money as rebates that did not pass beyond your own pocket?

"A. None of your business, sir. (Naftzger, 858.)

"Q. Mr. Naftzger, I will ask you if you have now told us fully and made a complete disclosure of all remuneration or money that has come to you from Mr. McIntosh, directly or indirectly, by reason of any car line transaction whatever?

"Q. Why do you hesitate?

"A. No; I have not.

"Q. What else was there?

"A. I do not intend to tell.

"Q. You refuse to answer?

"A. You can put it that way if you like." (Naftzger, 859.)

C. E. Maud, president of the Consolidated Forwarding Company, the company which joined with the Southern California Fruit Exchange in the institution of these proceedings before the commission, was also an interesting witness:

As long as I have been in the business there has been a refund by the car line companies averaging from a small percentage up to 25 per cent. of the refrigeration charges. It might be a flat rate of $15 a car on an average, the maximum being $35 and the minimum $5, to the Atlantic seaboard $35 being allowed. Allowances of rebates were made by eastern exchange, which I received by letter. (Maud, 818.)

From some of the companies I received rebates in person. I received rebates from the Continental Fruit Express, from Mr. Earl. (Maud, 819.)

One of the reasons that we want to route the fruit is that it gives rebates. (Maud, 823.)

The desire to get rebates to some extent has weight in our estimate of the value of the routing privilege. (Maud, 824.) We got rebates prior to the time that the carriers took charge of the routing. (Maud, 825.)

I made no objection to the Earl Fruit Company as a shipper as long as I got rebates, and the idea that Earl had an undue advantage over the rest of us came into my head after the rebates were cut off. Then I sat down and wrote the letter to Mr. Ripley. (Maud, 826.)

I got a rebate of $15 on cars that were not iced and $30 on refrigerated cars. I never received any rebate from a railroad company. I sought rebates and they were tendered to me. *The middlemen get the rebate and not the man who grows the fruit.* (Maud, 828.)

Stearns testified:

Before the routing was taken in hand by the initial carriers we used to have a call once or twice a week from representatives of the various lines soliciting us to send our business over their lines. (Stearns, 267.)

Everist testified:

Before the carriers took charge of the routing I had an intimation that I could obtain rebates from a party who would work the scheme for me. (Everist, 277.) Agents of eastern connections of the Santa Fe and the Southern Pacific used to call on us and urge us to ship freight over their lines. (Everist, 274.) At the time I knew there were a great many that were getting rebates. (Everist, 278.)

Westfall testified:

We paid a flat rate of $50 for refrigeration to the Atlantic seaboard and we received rebates from this. (Westfall, 829.) Mr. Hosbury, of the Toledo, St. Louis and Kansas City Railroad acted as our traffic manager and made arrangements for us with the Continental Fruit Express for refrigerator cars from time to time. While this arrangement existed we received moneys from Mr. Hosbury or the car company. He stated to us that he was in a better position to secure rebates from the car lines; recognizing his ability to do that, we employed him as traffic manager. We received moneys presumably from the car lines

through Mr. Hosbury. We received rebates from the Armour Car Line and from the Fruit Grower's Express. The maximum was $25 and the minimum $10 a car. To the Atlantic seaboard $25 and to such as Colorado points, $10. The rebate was received whether the car was refrigerated or not, and most of the time we got the same rebate regardless of refrigeration. (Westfall, 830.) I think we received several thousand dollars from Mr. Hosbury. *We sought the rebates so as to be on equal terms with competitors.* We sent out between 800 and 1,000 cars during the arrangement with Hosbury and the average was from $15 to $17.50 a car. (Westfall, 831.)

Hosbury never represented anybody but himself to me, although I believe he was a livestock agent of the Clover Leaf. *I paid him no salary as our traffic manager. I presume he considered the privilege of making the route over which our cars should pass to be sufficient for his trouble.* (Westfall, 831.) The rebates were paid in checks or drafts. They passed personally between Mr. Hosbury and myself, being handed to me by him. They were drawn on a Toledo bank. (Westfall, 832.)

Fay testified:

The private car lines have been accustomed to make rebates to me for refrigeration tariff, varying in different years and to different points. Last year it was $25 per car all around on refrigeration. On fruit not under refrigeration it varied from $10 to $25, I believe. (Fay, 833.)

We sought the rebates so as to have equal rights with our competitors. I understand that the rebate I was getting was an open rate to most every one. I never refused to receive more than my competitors. I got as large a rebate as I could without regard to what anybody else was getting. *I never turned these rebates over to the shipper. I kept them.* (Fay, 834.)

When I shipped the fruit of others I kept the rebates and charged the shipper the full rate. Last year (1899) we got rebates on 1,200 cars on account of

orange shipments, and on the lemons, averaging about $17.50 the car. (Fay, 838.) We paid no more to the people from whom we bought fruit when we got rebates than we do now when we do not get them. (Fay, 839.)

Lyon testified:

I never believed that the car line companies gave us all the rebate there was in it at times. We did not give the grower all the benefit of the rebate. *We got rebates from a man named Hosbury, who was a livestock agent of the Clover Leaf Company. That road is not a direct road in the sense of being the shortest.* (Lyon, 842-3.)

Earl, testified:—

Some rebates were made to some of the shippers by the Continental Fruit Express in consideration of their using those cars and not routing them over lines where they would get lost and cause the car company to lose mileage and time. The allowance was $10 or probably $15 to Chicago and $20 to the Atlantic seaboard. (Earl, 846.) We were forced to give allowances on account of competition of other car lines. Others did it and we were compelled to meet it. It would not have been given up except under pressure. (Earl, 846.) There was a demoralizing warfare between the car lines. There were patents pending and there was bitter feeling and they resorted to all manner of means to hurt each other and we gave up to the shippers in order to keep our cars moving $15 a car, so it came out of our revenue. We gave about $15 a car when we were getting $25 mileage. (Earl, 847.)

I cannot designate from my own knowledge any railroad that paid rebates to my car line within the last year except the Clover Leaf, represented by Hosbury. (Earl, 847.) We paid rebates out of our earnings of which there were several sources. I could not say whether it was from refrigerator charges or mileage charges. (Earl, 848.) Neither the Earl Fruit Company nor the Continental Fruit Express received

any mileage or rebates from the Southern Pacific Company, nor did they from the Santa Fe. (Earl, 848.)

Gregory, testified:—

Some of the car line companies offered me rebates and some did not. I accepted some and others I refused because they were not enough. (Gregory, 851.) I paid the full refrigerator charges and got a rebate from the car lines amounting to from $10 to $25. I got rebates from all the car lines. (Gregory, 852.) Last year (1898-9), my rebates amounted to about $3,000. (Gregory, 853.)

The railroad companies here did not pay rebates. (Marshall, 862.)

Bissell, testified:—

The car line companies paid rebates to everybody that did business. (Bissell, 865.) Before we took charge of the routing rebates paid to New York were about $35 a car from Los Angles, *the eastern lines giving up about* $15 *of that.* (Bissell, 878.)

Chambers, testified:—

Rebates were generally paid prior to January, 1900, by the car line companies to shippers. The plan of the car line companies was to get an excess mileage from connecting lines. The standard mileage was ¾ of a cent west of Albuquerque and one cent east of Albuquerque. The car line companies would arrange with our connections to pay a cent and a half a mile and agree in consideration that they would give those carriers a certain amount of the business, and out of that excess mileage allowances they would pay the shipper rebates. (Chambers, 890.) It was the policy of the Santa Fe System not to pay rebates, and it started out to do business that way, but it was finally obliged to lease its cars to a car line company. (Chambers, 892.)

In the development of the rebate practice it settled down to this, that the rebating was done through pri-

vate car lines. (Chambers, 898.) The payment of rebates previous to 1900 went back as far as 1887. (Chambers, 903.)

Sproule, testified:—

From the beginning the Southern Pacific declined to participate in rebate giving and our answer to our connections was that we would not join in this illicit work which we had from the beginning contended against and had used our efforts to avoid, and that we would not begin to violate the law. We therefore called our immediate connections to join us in a conference for the purpose of devising some plan of restoring rate conditions. We undertook to issue tariffs under which we would act upon our right to route. We told our immediate connections that we had called them into conference but that we contemplated action anyway and we wanted them to fully understand it so that they would not feel that there was any attempt on our part arbitrarily to change the channel of business. (Sproule, 917-8.)

By 1899 the demoralization had spread so that there was not a line handling oranges except the line that would pay those rebates, whether by the car mileage *or other device.* It can be laid down that every road east of Ogden, El Paso, and Albuquerque that was handling oranges was being bled. (Sproule, 918.)

On the condition that existed the Circuit Court of the United States said (1025):

"Prior to said agreement the keen rivalry existing between defendants' eastern connections led to a far-reaching system of rebates which was violative of the Commerce Act and cannot be too strongly reprobated."

SECOND.

We now take up the purpose of the Santa Fe and the Southern Pacific Companies, the initial carriers, in assuming control of the routing.

"We were determined to break up the practice which we believed they had indulged in of selling the business handled in those cars to our eastern connections, and this we could only do by taking the routing into our own hands, and notifying all such connections that any contracts or concessions made with or to the owners of these cars would be valueless, since we should pay no attention to routings. * * *

You ask why we select the citrus industry alone in exercising our right to route freight for which we accept the responsibility as to through rates. The answer is that the right is one which we do not care to exercise except for our own protection, and for the general good morals on the part of both carrier and shipper; and should circumstances arise which should inject into other business the same conditions that have heretofore existed as to the citrus business, we should unquestionably desire to exercise our rights as to such other business. At the present time there seems to be no necessity for so doing." (Letter of President E. P. Ripley of Santa Fe Company to C. E. Maud, introduced as evidence before the commission by complainants." (821-2.)

Shippers in Southern California who did not get the full benefit of a division of the rebates from Mr. Earl and others were naturally indignant, and it was to prevent that state of affairs solely and for no other reason in the world than to maintain legal rates that we took the routing of the business into our own hands. (Morton, 122.)

Just after the action was taken by us on the routing we had a meeting of the citrus fruit people of

Southern California and we told them then that we thought this change in the routing was the beginning of the end of the private car lines which were so distasteful to the people of Southern California, and the fact that Mr. Earl a year afterwards sold out proved that we were correct in the premises. (Morton, 129.)

Our exercising the right of routing was not for the purpose of dividing traffic and had no reference to that whatever. The reason of it was to maintain the legal rates. Another reason was to control the refrigerator cars, as we had been having a great deal of trouble in getting them returned from certain lines, and for that reason we never could tell how many cars we needed to handle the traffic, because we could not approximate how long it would take to have them returned, it being difficult to get the eastern roads to bring back empties, especially if they were crowded with traffic. Now if we find a line not returning cars promptly we take the business away from it. Our connections know that the matter is in our hands and that to get the business they must be prompt. (Chambers, 209.)

We exercised the right of routing in the interest of the small shipper and in the interest of not having any discriminations. (Morton, 127.)

We reserved the right to route on January, 1900, to put an end to irregularities and the giving of rebates which had been existing. (Barnwell, 440.)

While the amount of traffic that might be returned by a connecting line was considered in the distribution to connections, it was not to any extent. (Barnwell, 448.)

I had to do with the initial carriers assuming control of the routing of citrus fruit. The payment of rebates had got to such a pass that it was necessary for us to do something to protect all the companies interested. I had interviews with the representatives of some of the eastern lines to see if something could not be done to straighten the matter out. Though all expressed themselves as very much dissatisfied with existing conditions, it was the same old story, each one was afraid of the other and afraid that if it stopped giving rebates on the business it would not get any of it. They said that they would be very much pleased to have us take charge of the routing. That was in 1899. I talked with Captain Kramer of the Lake Shore, with Mr. Mitchell of the Michigan Central, Mr. Bigelow of the B. & O., and Mr. Shane of the Erie. *I suggested that if the initial carriers exercised their right to control this freight it would do away with the payment of rebates and would relieve them from the tribute that was being exacted by the car line companies, for the reason that there would be no inducement to pay rebates because they could not tell whether they would get the business though they agreed to pay for it. That is, they might agree to pay rebates on certain business and then it might move over other lines.* By the car lines I mean the owners of private refrigerator cars who were operating on the Santa Fe and the Southern Pacific. They paid the rebates. (Bissell, 863-4.)

The private car companies had been free to make any arrangements with the connections of the Santa Fe and the Southern Pacific at any junction point,

and the natural result was that as such rebates grew in volume the Santa Fe was deprived of the long haul, business being diverted from its line at Kansas City, for instance, or at Pueblo, instead of going through to Chicago. (Bissell, 865.)

A great deal of business left our rails at Kansas City and some left them at Burton on the Frisco. Some left at Denver to go by way of Omaha, and this notwithstanding that the shipments were destined for Chicago, reached by Santa Fe rails. (Bissell, 866.) *In many instances shipments left our rails for destinations reached by us more directly than the roads the shipments took.* (Bissell, 867.)

Another reason that we wanted to control the routing was that our cars were scattered. The special equipment was being scattered over roundabout roads and to lines with which we did not do much business, making delays in the return of the cars for eastbound fruit traffic. Such roads lacked ability to get loads for the cars at Kansas City and Burton, necessitating the haul of empty cars back, when, if they had been delivered to us at Chicago, we could in quite a number of instances have got them loaded back here to the orange fields. (Bissell, 867.)

There seemed to be an idea that the car line companies were exempt from the Interstate Law, which provides imprisonment for railroad men giving rebates, and we had to arrange to do business through an outside car line. We deemed this necessary to hold the business which we thought rightfully belonged to us. The conditions were very unsatisfactory to the

initial lines and also to the connections. (Bissell, 868.)

I frequently talked the matter over with eastern connections, and we came to the conclusion that we would route the business; and in pursuance thereof, in December, 1899, Mr. Sproule, representing the Southern Pacific, and I, representing the Santa Fe, notified the Erie, Grand Trunk, Lake Shore, and a dozen other leading eastern lines, that after January 1 we would route the citrus traffic, and that if they had made any special arrangements looking to the control of the business, through car line companies or otherwise, the results that they expected could not be obtained and that we suggested the cancellation of such arrangements. (Bissell, 869-70.)

To this announcement we received from the traffic departments of the different connecting companies the replies shown from page 870 to 872 of the record.

On October 9, 1899, R. H. Countiss, for the transcontinental lines represented in the freight bureau, sent out a circular letter which went to all connecting carriers that "to effectively promote the observance of the Interstate Commerce Act" a tariff would be made with roads giving the assurance that "they will not deviate from the rates provided therein, directly or indirectly, by any method or device, whether in conjunction with carriers, shippers, consignees, or car lines," and that the tariff should bear the following provision:

"In guaranteeing rates the absolute and unqualified right of routing beyond its own terminal is reserved to the initial carrier giving the guaranty."

It further stated that an indefinite or evasive response would be considered as indicating unwillingness to give the desired assurance." (875.)

When the circular was sent out a few of the connecting roads did not respond and they were left off the tariff of November, 1899. They subsequently came in on a tariff issued in January, 1900. (Bissell, 875-6.)

Our object in taking control of the routing was to be relieved of the dangerous practices that were in vogue, to obtain control of our own equipment or the equipment that was assigned to our line, and to enable us to get a fair compensation for the services that we were performing without violating the law either directly or indirectly. (Bissell, 876.)

Our sole object—and there was nothing beyond that—was to prevent the giving of rebates and to maintain the lawful published tariffs. (Bissell, 878.)

In no other business going out of Southern California was there such a necessity for action with respect to routing as there was regarding the citrus fruit business. (Sproule, 931.) If the same necessity would arise with respect to other commodities the railroad company would exercise the right if it felt that to be the only remedy. (Sproule, 932.) The demoralization of the citrus business under rebating has not entered into any other business. (Sproule, 933.)

I recommended to Mr. Bissell that we take control of the routing, and our sole purpose was to stop the giving of rebates. It was my judgment that it was the only way it could be stopped, as we had tried various ways before. (Chambers, 893.)

Our taking charge of the routing was in absolute

good faith and to prevent the payment of rebates and put all shippers on an equality, large and small. There had been a great deal of complaint to myself and other of the officers that certain large shippers were getting greater rebates than the smaller ones. (Chambers, 894.)

The conditions in the citrus traffic had been growing worse with respect to rebates until 1898 it became very serious and in 1899 it became intolerable. At first certain roads that had not been sharing in the orange business by reason of their location came into Southern California and offered shippers a certain number of dollars per car for every car they would send over their road. The effect was to divert the business from the lines that had formerly been getting it and which were in the natural direction that the traffic would take. Moreover, the cars could not be got back with expedition as the roads that gave the rebate to get the business did not have the same interest to get the cars back that they had to get the revenue loads. (Sproule, 914-5.)

Under the rebate practice the cars were returned the same as other empties, which was entirely ineffective for our purpose, the business being done on a basis that caused the roads handling it to feel that they were not warranted in giving empties proper service. (Sproule, 916.)

When it got to paying $35 *and* $45 *a car refunds on oranges to New York, it reached a point where some of the roads went out of the business because they said they could not afford to be bled any longer. Other*

roads insisted upon our protecting them against what they termed blackmail. (Sproule, 917.)

From the beginning the Southern Pacific declined to participate in rebates and our answer to our connections was that we would not join in this illicit work.

We therefore called upon our immediate connections to join us in a conference for the purpose of devising some plan of restoring rate conditions. (Sproule, 917-8.)

In 1899 I doubt whether there was any carload of citrus fruit that moved out of California without somebody getting a rake-off on it, although the shipper himself may not have got it at all. (Sproule, 921.)

THIRD.

That the practice of giving rebates was quickly and completely stopped, placing all shippers on the same footing, is shown by the record.

The commission found as follows (66):

"The payment of these rebates was discontinued January 1, 1900, and there is no evidence that the practice has been resumed."

In his dissenting opinion Chairman Knapp said (80):

"When routing was denied to the shippers, on January 1, 1900, these rebates had entirely ceased, and have not since been resumed. No explanation was offered to modify the natural inference from these admitted facts. They illumine the case beyond the need of comment. * * * In my judgment the commission should not seek to enforce a rule of conduct which, as experience shows, may aid illegal practices, unless clearly convinced that the provision in question so requires.

If the sixth section permits a construction, as I am confident it does, which lessens inducement and opportunity for offensive wrong doing, that construction should be adopted; and if the commission has any discretion in the premises, as I think it has, its discretion ought not to be exercised in favor of the confessed beneficiaries of criminal transactions." (80.)

The effect of the routing rule was to stop rebates and secret cutting of the published tariff definitely, fully, and absolutely. In answer to the query in the opinion of the Interstate Commerce Commission as to how this would result it may be said that every connection was given to understand that in case it was found offering concessions for citrus fruit business after January 1, 1900, we would see to it that business was diverted from its line; and I remember going so far as to say that if I found anybody cutting our rates secretly we would not only divert the citrus business from it but would also take away other business. (Morton, 127.)

Our sole purpose in routing was to maintain the rates. (Morton, 125.) *I want to add that the chief reason or chief objection on the part of the shippers to our taking the routing in our own hands was that they were no longer able to sell the business and get rebates. They admitted this privately to us.* (Morton, 122-3.)

The eastern connections recognized that rates had been badly demoralized and on our assurance that there would be a fair division of business with connections they entered into the joint tariff. We made it a forerunner in adopting the tariff with them, and it was distinctly understood that the absence of that consent meant that the name of that company would be left off the tariff. (Morton, 123.) Just after we took charge of the routing we told the citrus fruit people of Southern California that it was the beginning of the end of the private car lines which were so very distasteful to them, and the fact that Mr. Earl a year afterwards sold out proved that we were correct. Since January 1, 1900, the private car ownership has been

eliminated, and one shipper has had the same rate that others have had. (Morton, 128-9.) *The routing by the carriers has certainly made an equality of rates. It has given the small shipper a chance to grow. It has taken away from the large shipper any advantage.* (Morton, 130.)

During the last three years (since January, 1900), the rates have been absolutely maintained and I know of no rebates having been paid in the three years by the Santa Fe or any other road. (Chambers, 202.)

The effect of the routing rule has not been to take away the deliveries we want. We get them on request. (McLeod, 253.)

I do not know that the effect of the routing rule by the carriers has worked any hardship to me. (Stearns, 255.)

Since January 1, 1900, there has not been to my knowledge any payment of any rebates, or drawbacks, or any compensation by any railroad companies for the transportation of fruit to any shipper. Nothing has been paid indirectly. (Stubbs, 290.)

The giving of rebates has not existed since we took the routing into our own hands on January 1, 1900. (Barnwell, 440.) *It is very certain that the reservation of the right to route has prevented the giving of rebates.* (Barnwell, 453.)

Since January 1, 1900, *we have not got anything back in rebates, and that is one of the troubles.* (Naftzger, 806.)

None of the companies made any allowance this season (1900). (Maud, 818.) No rebates have been received since the carriers took charge of the routing. (Maud, 825.)

We are not now receiving from anybody, any company or any source, any commission or anything directly or indirectly by any name, by which we get back anything paid for refrigeration or for freight. We have no understanding or arrangement, or promise, that any rebates will be paid. The giving of rebates stopped last year (1899) at the end of the deciduous season, say October. (Westfall, 833.)

We have got no rebates lately. It has all stopped as far as I know. (Fay, 834.) My prognostications in my telegram to Paul Morton that he would utterly ruin the citrus business did not prove true because the carriers were not nearly so arbitrary in their routing as I thought they would be. (Fay, 837.) We are making out of our business less than we did before by the earning of rebates which were frequently received. (Fay, 838.) Last year we got rebates on 1,200 cars, on all orange shipments and on the lemons, averaging $7.50 a car. This year we will ship about 1,000 cars and we get no rebates on them. (Fay, 838.)

No rebates have been paid or promised since January 1, 1900. None have been paid by the Continental Fruit Express. (Earl, 848.) We are receiving no rebates or allowances from eastern connections now, nor have we any understanding that they are to be paid hereafter. The railroads are routing those cars now and they go over all kinds of roads. We have no control of the routing. *Those eastern roads cannot buy the business.* If they wished to they cannot buy it. (Earl, 848-9.) The shippers are not getting any drawbacks from the Continental Fruit Express nor from any car line. (Earl, 849.)

I have received no rebates since January 1, 1900. (Gregory, 853.) There have been no offers of rebates since January 1, 1900, and no promises of rebates, and no rebates have been received, and I do not expect to receive any. (Gregory, 853.) Aside from losing control of my shipments I lost my rebates too. (Gregory, 855.)

Since January, 1900, the Continental Fruit Express has not been able to effect any arrangement for rebates, I presume because the carriers are doing the routing. At any rate, I know that *the routing must be in our hands in order that we may realize on any rebate arrangement.* (Moulton, 852.)

The effect of the routing rule was absolutely to stop the giving of rebates and to leave on the Santa Fe rails Chicago business that previously left them. (Bissell, 876.) Our routing of the citrus business absolutely prevented the necessity of giving rebates.

The effect of the routing rule is that everybody gets the same rate, which, as I understand it, was the object of the Interstate Law. (Bissell, 877.) One of the benefits that would properly come from our routing this business would be that we have it in our power to divert business or withhold it from a road which would be taking an unfair advantage of patrons with respect to the settlement of just claims. (Bissell, 879.)

The effect of our taking the routing was to stop absolutely the giving of rebates. (Chambers, 893.) *Now the freight takes the route that gives the best general service, considering time and ability to divert and return cars promptly. The circular that I made up shows the most direct routing to all destinations.* (Chambers, 896.)

The general effect of our routing has been that we get better service from the refrigerator cars. They are returned to junction points with more regularity and to points where we want them. The icing facilities are better for the reason that we know the lines over which business is going to move and proper arrangements can be made with those lines for providing ice, which is one of the very important things to be done. (Chambers, 897.)

It is impossible to give rebates now. (Chambers, 897.) *The effect of our routing citrus fruit has been to expedite its transit very materially. Since* 1900 *the routing business has not been saleable, and consequently there is no traffic in it.* (Chambers, 905.) It is not true that the effect of our instructions in the routing circular is that agents cannot allow a change of the percentage, or of the through rate, or of the business. (Chambers, 912.)

I should say that the direct effect of routing by the initial carriers is efficiency, for they are in a position to control proper service, proper facilities, proper return of empties, and proper settlement of claims. (Sproule, 927.)

On the effect of the routing rule the Circuit Court of the United State said (1032):

"It is true that said rule has struck down an unlawful system of rebates. That result however, which was but incidental, in no way affects the main, and, as will appear later on, the pivotal fact in this case, that the defendants and their eastern connections in entering into the contract and combination for routing by the initial carriers intended thereby to uphold their published rates."

And is it not the purpose of the Interstate Commerce Law and the rule of right dealing that published rates should be upheld? Must not the published tariff stand until it is superseded by another publication? And, as we have before suggested, is there anything in the record to show that under the arrangement another tariff could not be published? Certainly there is not.

So-called traffic pool with connections.

In its conclusions the commission found that a tonnage pool of traffic among connecting carriers *not defendants* was established and that the defendants so controlled the routing as to give "specific percentages" of its traffic to their several connections. (74.)

In his dissenting opinion chairman Knapp of the commission says that a careful examination of the evidence failed to convince him that there was any substantial basis for the charge that the initial carriers so controlled the routing as to effect a violation of the anti-pooling section. (80.) He points out that the charge is inconsistent with *the other finding of the commission that the actual routing was generally according to the request of the shippers.* He mentions that if, as is admitted, the traffic in most instances was carried by the road selected by the shipper, it is diffi-

cult to see how the connecting carriers were at the same time pooling it in violation of the 5th section.

We shall show from the record that the evidence clearly supports the views of chairman Knapp, and that there is absolutely no justification for the conclusion reached by the commission that the initial carriers were pooling the business with their connections.

When the initial carriers determined to route the traffic Edward Chambers, General Freight Agent of the Santa Fe, prepared a routing circular or a letter of instructions to its agents telling them how the traffic should be distributed to connections and showing what percentages of the business should be assigned at each junction point to the carriers entering there. One of these circulars may be seen at pages 368 *et seq.* For example, it directed that at Akron, Ohio (see page 369), 50 per cent. of the citrus traffic be given to the K. K. K., I. I. I., and B. & O., and 50 per cent. to the K. K. K., I. I. I., and Erie. In like manner an assignment was made as to all junction points. Mr. Chambers prepared this tabulation out of his head from his long experience in the business and complete knowledge of its movements. The routing circular was designed to be an approximate guide to agents, so that they would not be left upon their own resources as to routing under the new order, and it was an expression of what channels the business had theretofore passed through. It was not a hard and fast distribution, it never was followed except approximately, it was frequently changed at the request of shippers, and it was in no sense an agreement with eastern connections, for every one of them was abso-

lutely in the dark as to what business it would get or whether it would get any at all. The proposition of the commission, adopted by the Circuit Court (1022), that the routing circular showed a traffic pool among the eastern connections of the defendant is everywhere and repeatedly refuted by the record and there is not a word to be found in substantiation of the claim.

Chambers testified:—

I prepared the routing circular distributing citrus traffic to connections in the latter part of December, 1899, and it was based largely upon the proportions of business that the same lines received previous to that time, before the carriers took control of the routing. We just took into consideration that there were certain lines leading from Chicago and from the Missouri river to principal destinations that took a large amount of citrus traffic; that the delivery at the destination controlled the routing; and that the facilities of those lines were closer to the fruit section of the city and necessarily took a greater proportion of the business than other lines not so well situated. In making up the sheet I gave representation to all the principal roads leading to the different points of destination, so that our agents would be instructed as to the route that they could give the fruit *in case any shipper wanted any particular line.* (Chambers, 887.)

We did not work, though, to those percentages at all and they cut no figure when distributing the business except upon an approximate basis. The distributions of the percentages were an approximation which the agent was to follow as nearly as possible. *I made up the table of percentages from my own general information as to how business had moved previously.* (Chambers, 888-9.) I have been in the freight business with the Santa Fe for 25 years and can tell without consulting anybody or any records pretty close to what percentage of business goes through the different gateways. *No eastern connection*

had any knowledge whatever as to what percentage it would get. They never knew anything about it. (Chambers, 889.)

To explain, there are three direct lines into Cleveland on the routing sheet from Chicago, the Nickel Plate, the Lake Shore, and the Erie. The percentages shown, I think, are about 50 per cent. for the Nickel Plate, and 25 per cent. for the Lake Shore and the Erie. As a matter of fact the Nickel Plate has taken 95 per cent, for the reason that shippers always requested Nickel Plate delivery at Cleveland, as that depot is down in the business part of the city and close to the fruit section and is really desirable, and it would be a hardship on a great majority of the receivers at Cleveland to route the business over any other line than the Nickel Plate. (Chambers, 889.)

Although the Nickel Plate at Cleveland receives a small percentage on the distribution sheet it practically did receive the bulk of the business, and that will be true of other points. There was a departure from the percentage estimates, as we intended and expected. (Chambers, 890.)

In fixing the percentages of distributions we took into account the ability of the connecting carrier to handle the traffic promptly and satisfactorily and to make prompt returns of empty cars and also to return cars loaded as far as possible. (Chambers, 890.)

The suggestions of the Interstate Commerce Commission that we assumed control of the routing for the purpose of creating and maintaining a pool with the eastern connections is absolutely wrong. Our connections have known nothing about it, nor had they anything to do with it. It has been absolutely in our hands. I have handled all the details, and through me is routed all the citrus fruit that moves out of California on the Santa Fe line." (Chambers, 894.)

Sproule, testified:—

The tonnage pool is a myth from the beginning. There was no relation whatever between the routing rule and the existence of a tonnage pool. Such a pool had no existence. (Sproule, 919.) In distributing the

tonnage of citrus fruit over connecting lines *we let the business take the routes which it had taken under former conditions.* You might call them the direct lines that were originally in the traffic. In alotting the percentages we aim to follow the natural and former drift of the traffic, and also to give effect to the preferences for certain routes which the shippers had shown. (Sproule, 923.) The business is distributed among the lines that serve the territorities the oranges are to reach. It is service that controls." (Sproule, 924.)

Morton, testified:—

There was no pool or understanding of any character that could be distorted into a pool of the business east of Chicago, or east of St. Louis, as suggested in the opinion of the Interstate Commerce Commission. They have nothing to say about it. They take what traffic we give them. (Morton, 125.)

Business to connections has been divided on the basis of equity and justice. *We have tried to give the lines that perform the best service the most of the business.* The element that controls in apportioning this business is chiefly good service. We give business going to Pittsburg to the Pittsburg line which can take it to Pittsburg most expeditiously, and to Detroit to the line that can handle it to Detroit quickest. And the business is divided all through on the basis of good service. *Another consideration is to get returning cars back quickly.* (Morton, 126.)

There is absolutely no agreement or understanding of any kind with any of the eastern connections that it shall have one per cent. or 50 per cent. of the business. I have in mind one connection that has better facilities at one point, where it has erected at a large expense an orange receiving house. Of course that is considered, and we have followed the inclination of the shipper. There has been nothing hidebound about this matter. *Nor is there any agreement or understanding between the eastern connections themselves as to a division of the business.* (Morton, 126.)

Parkyns, testified:—

Mr. Sproule, Freight Traffic Manager, determines how the business shall be distributed to connections. At the beginning of each season he states the number of cars, presumably, that will go over different lines. He puts out what you may call a percentage sheet. *The percentages given fluctuate in practice.* (Parkyns, 233-4.) *The connecting carriers are not privy to the percentage sheets. The preparation of them is a matter upon which the initial carrier acts upon its own exclusive initiation.* (Parkyns, 272.)

It was testified by Mr. Nadal (304), the witness who purloined from the Southern Pacific Company private information while he was in its employ, and who appeared as a witness against it for the purpose of showing a pool of traffic with connections, that it is a difficult matter to follow the percentage tables. He knew that it was not only difficult but also impossible, and he was aware, moreover, that the percentages were mere approximations.

There has been no understanding with connecting carriers as to the proportion of traffic which they would receive. A great many requests come from eastern connections asking for a larger share of the business after it passes our terminus, both by mail and otherwise. (Barnwell, 412.)

The Wisconsin Central on January 10, 1902, wrote us saying that certain orange shippers in Redlands, California, wanted routing over the Wisconsin Central to Fond du Lac. The routing was given. (Barnwell, 414-5.)

Does not that show that the Wisconsin Central, named in the joint tariff, was not a party to a traffic pool? And that the Commission was wrong (1022)

when it inferred from the routing circular that connections had an agreement for "specific percentages"?

The Southern California Fruit Exchange, on December 2, 1902, wrote us requesting Michigan Central delivery to London, Ontario. Michigan Central delivery was given. At that time the distribution sheets contained only Canadian Pacific delivery. (Barnwell, 416-7-8.)

Does not that show that the Michigan Central, named in the joint tariff, was not a party to a tonnage pool of "specific percentages" and that it was not getting a fixed proportion of the business? And if the Canadian Pacific had a "specific percentage," how could a part of the business going to it have been taken away and given to the Michigan Central?

On November 25, 1902, the general manager of the Canadian Pacific Dispatch requested that it be favored east of Chicago with some of the citrus traffic, to which affirmative answer was made. (Barnwell, 418-9.)

Does not that show that the percentage sheet or private routing circular was deviated from, that the business of one road was taken and given to another, and that the percentages were not "specific"?

On December 1, 1902, the Canadian Pacific Dispatch wrote that Blodgett & Company of Worcester, Massachusetts, preferred to have oranges routed by the Canadian Pacific and asking whether the request would be granted, and it was. (Barnwell, 419.)

Does not that show that the line over which the business had been going did not have a fixed agreement as to tonnage, for otherwise how could it have been taken from it and given to the Canadian Pacific?

Since the reservation of the right to route by the carriers no different arrangements have been made with any connection than such as I have just read (referring to letters from eastern connections asking for business from the initial carriers). In fact, we had no transactions with any connections of the defendants other than those just related respecting the distribution of business to the lines of connecting carriers. (Barnwell, 420.)

On March 17, 1903, A. F. Naftzger, president and general manager of the Southern California Fruit Exchange at Los Angeles, wrote asking for certain changes in a preferred delivery sheet which he had previously submitted and which we had been following in handling the business of the exchange, which is between 40 and 50 per cent. of the Southern California business. The changes requested were made. A great many verbal requests were made to our officers and agents, and where they appeared to be in good faith they were granted. (Barnwell, 420.)

Does not that show that there was no hard and fast rule giving "specific percentages" of tonnage to particular eastern connections?

On March 27, 1902, A. Gregory of Redlands, California, wrote requesting that shipments to Carthage, Missouri, be delivered to the Frisco line at Wichita instead of going to Kansas City. This request was granted, although it robbed the Santa Fe of about 205 miles of haul. In the matter of this whole business *we follow the routing circular only so far as it will not work hardship to the shipper.* (Barnwell, 423.)

Does not that show that the business going to one connection was taken away and given to another and that there was no agreement with connections as to tonnage?

At the request of shippers for routing and deliveries we have given up to connecting carriers a great deal of business which we could have hauled farther on our own line, as where we surrendered at Pueblo business destined to Omaha, which we might have taken to Kansas City. (Barnwell, 423.)

On February 21, 1903, Anthony Shaw of Pittsburg wrote to the Spar Fruit Company of Los Angeles asking for certain routings and upon the request of the Spar Fruit Company the routings desired were given by the Santa Fe. (Barnwell, 424.)

How could those routings have been changed by taking from one connection and giving them to another if the distribution sheet and its percentages showed an inflexible tonnage arrangement with connections?

From pages 5 to 25 of the record will be found a great deal of correspondence showing that there was no tonnage pool or agreement with connections, and that the eastern roads were entirely in the dark as to what they would receive or whether they would receive anything.

We aim to equalize the amount of freight we have to give to various direct lines; *we increase the percentage at one time and decrease it at another* so as to make a fair distribution. (Barnwell, 427.)

The Kansas City Southern Railway Company, on September 12, 1903, wrote that it would like to have a portion of the Fort Smith business by way of Kan-

sas City and a portion of it was given to them. At the time the routing circular did not name this road. (Barnwell, 431-2.)

On November 21, 1901, A. H. Naftzger of the Southern California Fruit Exchange mailed a list of deliveries he desired made in various eastern states, stating his reasons, and the deliveries were allowed. (Barnwell, 433-5.)

The request of the Southern California Fruit Exchange asking changes in its lines of routings to various points was granted. The change requested from the Frisco line at Kansas City robbed the Santa Fe of 200 miles of haul. (Barnwell, 437.)

On January 13, 1902, the New York Central & Hudson River Railroad Company wrote us giving the names of numerous consignees who desired citrus fruit to arrive over the New York Central. The request of the connecting carrier was granted and the allowance of 50 per cent. in its distribution circular to the New York Central was changed to 75 per cent. (Barnwell, 438-40.)

And yet the Commission found (74) that the defendants so controlled the routing as to give *specific percentages* of its traffic to their several connections!

We never had any correspondence or any dealings or understandings, verbal or otherwise, with connecting carriers respecting the distrbution of citrus fruit different from those I have read in evidence. (Barnwell, 440.)

For example, at Buffalo the routing circular shows 20 per cent. to one line, to another 20, to another 40, and to another 20. *This is the result of making the*

distributions and deliveries asked by the shippers. (Barnwell, 443.)

In assigning business to connecting carriers we took into consideration the promptness with which they handle business, with which they settle claims for delay, lost or damaged freight, and their relative ability or inclination to return promptly empty equipment, and also equipment loaded, although we never pressed hard on that point, as we have to get the cars back. (Barnwell, 443.)

The distribution figures were worked out principally by Mr. Chambers, general freight agent. (Barnwell, 443.) *The connecting carriers do not know what the distributions are.* (Barnwell, 443.)

We are not obliged to follow the distribution sheets at all. *They are merely a guide and we do vary the distributions from time to time.* It is not practical to follow them is we consider the requests made upon us. We have varied the figures in the distribution circular from time to time. (Barnwell, 443.)

Since we assumed charge of the routing in 1900 there has never existed any understanding of any sort with connecting carriers in any part of the United States or Canada, or with car companies, their representatives, or agents, about the amount of business that should be distributed to any railroad or car line, or as to the distribution of freight receipts or citrus traffic, except as we are governed by our division sheets, which apply to all other traffic. (Barnwell, 445.)

We make no comparisons with the Southern Pacific Railroad Company of the monthly receipts showing

the business that goes over connecting lines. (Barnwell, 451.)

The replies of the traffic managers of the different connections appearing on pages 870 *et seq.* show conclusively that they had no understanding with the initial carriers as to a division of business. I think the telegrams received from time to time from the traffic departments of the eastern connections indicate that there was absolutely nothing in the suggestion of the Commission that we assumed control of the routing for the purpose of making a pool with eastern connections. (Bissell, 879.)

There has not been any understanding with eastern connections as to what they would receive beyond the statement that they would be given fair treatment, *and as a matter of fact there is not one of them today that knows what percentage it gets.* There is no tonnage pool. There never was any tonnage pool, and there never was any agreement, understanding or contrivance by which the routing of this business had anything to do with a tonnage pool east of Chicago or St. Louis. *A tonnage pool with our eastern connections, based on this routing, was absolutely never thought of.* (Bissell, 879.)

The basis of determining proportion or percentage of citrus fruit awarded to connecting lines of the Santa Fe was worked out by Mr. Chambers from the record of the business. He drew up the routing sheet which showed how it should be properly divided to the interests of the business—that is, I mean that in New York City almost all the orange shippers want Erie delivery. In Pittsburg I believe it is the B. &

O.; in Cleveland the Nickel Plate; in Buffalo the Lake Shore. He (Chambers) submitted the schedule to me and we looked it over and concluded that we would go ahead on it, and it has been changed from time to time. (Bissell, 880.)

The return business was considered, but that was not a guiding rule. For instance, the Pennsylvania gives us more west-bound business than any other line and it gets the lowest percentage of the business from us. (Bissell, 881.)

At the time the routing circular was made up we were very particular to give the best routes east of Chicago, as we expected fault would be found. (Bissell, 881.)

The chief factor that we considered in apportioning the business was the record those lines had made in the past of being able to transport traffic to a given market with dispatch and satisfaction. (Bissell, 881.)

We did not give to each company a certain percentage of the business anyhow whether it competes or not, and one of the factors in establishing what we think a connection is entitled to is its ability to do the service in a satisfactory manner; and if we should find one of our eastern connections neglecting this business and not treating it fairly, and not giving the shippers the consideration they were entitled to, it would soon find that it had to settle with us. (Bissell, 885-6.)

The matter of getting return cars with loads was never taken into account to the detriment of the shippers. (Bissell, 886.)

We have reduced and changed percentages from time to time, as the exhibits on file in this case will show, and the allotments to any particular line were not invariable. We took away business from our connections that were not making time. (Sproule, 929.)

Does not the foregoing prove beyond all question that no tonnage pool was entered into by the initial carriers and their connections? The finding of the Commission (74) that there was a tonnage pool is merely an inference—a conclusion jumped at as an effect of the private routing circular of the Southern California Railway Company to its own agents. (1022.)

It seems strange that the flood of testimony which we have just reviewed, in volume and movement like a Mississippi, should have been absolutely ignored by the United States Circuit Court and a decision rendered "that the routing contract here in controversy does so apportion freights." (1046.)

One of the "conclusions" of the Commission which controlled the court in its decision on demurrer to the bill and which undoubtedly had its effect upon the decision on the merits is as follows (1022):

"The routing circular of January 20, 1900, extracts from which appear herein in connection with the findings as to the rule of the carriers reserving to themselves the routing, shows that the orange shipments were forwarded by the initial carrier so as to give certain percentages of the traffic to connecting lines."

Another "conclusion" of the Commission, also quoted by the court in the decision on demurrer (1022), is as follows:

"It further appears that a tonnage pool of this traffic as between the connecting carriers *not defend-*

ants was established, and that the defendants so control the routing as to give specific percentages of this tariff to their several connections, thereby fulfilling and giving effect to this unlawful and forbidden arrangement. Reason is found in the facts shown for the *belief* that the suppression of the practice of allowing rebates was only an incidental result of and was not the primary or principal object of the defend- carriers in taking over to themselves control of the routing beyond their respective roads, but that the object was to give effect to the tonnage division before stated between their connections."

Now, there should be something stronger to show this object than the misty statement that "reason is found * * * for the belief." What was the reason for the belief? It was not an evidentiary reason. There was no evidence to support it. There was a flood of positive proof to controvert it.

That the routing circular did not give "certain percentages" or "specific percentages" to connections; that it was intended only as an approximation for the guidance of agents of the initial carrier alone; that it was changed from time to time without the knowledge or consent of connections; that the percentage at a given point to one connection was reduced and the percentage to another increased without either connection having anything to do with or knowing anything about it; that whether a conection should receive a percentage of the traffic or anything at all was a matter of which it was wholly in ignorance; and that, in short, there was not the shadow of an understanding of any sort whatever with eastern connections that anyone should get "certain percentages" of any traffic whatsoever—all these are facts which were estab-

lished by what the defendants supposed would be overwhelming testimony, by the positive and unqualified sworn statements of all the men who had anything to do with the matter and by correspondence from eastern railroads betraying their absolute ignorance of the whole situation. Of what use is testimony, anyway?

Even before the bulk of this enormous accumulation of evidence on this point had been presented, the commission had not temerity enough to say positively and squarely that the practice of routing was designed to effect a tonnage division. Notice that in the second sentence of the last paragraph just above quoted the commission goes no farther than to say that "reason is found in the facts shown for the belief." In the first paragraph above quoted the commission draws from the routing circular alone the inference that the traffic is divided with connections; and in the second paragraph it states another inference—that there is reason to believe. The "facts shown" are the routing circulars which suggest the inference. How is that for a broad and deep foundation on which to rest a decision involving annually 25,000 carloads (214-5) of traffic?

After the commission had made its conjecture, without any evidence of a traffic division with connections and with positive proof that none existed, the defendants went to work in the United States Circuit Court to demonstrate so clearly that there was no tonnage arrangement that even the blind might see it. But the court disregards the evidence and decides (1046) "that the routing contract here in controversy does so

apportion freights among the defendants' eastern connections and is essentially such a pool."

Shippers Never Routed.

The conclusion of the United States Circuit Court on final hearing was that any agreement between competing railroads whereby the volume of freights each shall receive is to be determined through any conventional means which is intended to and does suppress competition in rate or service is a traffic pool; and that the routing contract here in controversy (meaning the routing reservation in the joint tariffs) does so apportion freights among the defendants' eastern connections and is essentially such a pool. (1046.)

Therefore "the routing contract here in controversy" (1045) was intended to and does suppress competition either in rate or service. In other words "the routing contract" must have changed the conditions that existed before it was formed. In answer to this we purpose to show that previous to the enforcement of the routing rule on January 1, 1900, the shippers never in fact routed their business. They made an illegal sale of the routing privileges to the car line companies, which in turn made an illegal sale of the traffic to the eastern connections of the defendants. Therefore, as the shipper never routed the business, the condition as to routing was not changed by what the court terms "the routing contract," and the routing contract did not "suppress competition either in rate or service." We are speaking of legal competition. Of course it did suppress absolutely and almost instantly the gross illegal competition which had been festering for years and which had grown out of

what the court in describing as "competition" characterizes as "that fierce rivalry" which "existed between their eastern connections before the routing rule was adopted."

Now let us take a look at the conditions which existed before "the routing contract" was entered into and which, it is alleged, "does suppress competition in either rate or service."

"Rebates of about $7 a car were paid to us by the Refrigeration Company *for the privilege of dictating the route.* (Westfall, 829.) Hosberry never represented anybody but himself to me, although I believe he was a live stock agent for the Clover Leaf. I paid him no salary as our traffic manager. *I presume he considered the privilege of making the route over which our cars should pass to be sufficient for his trouble.* (Westfall, 831.)) Previous to the enforcement of the routing rule the routing was to a large extent in the hands of private car lines, although apparently in the hands of consignors. (Morton, 118.) Generally speaking the traffic did not go over the line of the connecting carrier that some shipper might have wanted, but *it traveled as directed by the car line company.* (Morton, 122.) The car line companies sold the routing to eastern connections of the defendant companies, the railroad giving the largest rebate securing it. (Morton, 119.)

Two years ago Hosbury of the Clover Leaf offered us inducements to route business that way. (Earl, 847.) The car line companies usually did the routing and they paid the rebates. (Gregory, 853.) *The shippers gave up the routing to the car lines as a consideration for rebates. I know this.* (Bissell, 865.)

The car companies went to the shippers and contracted for the routing of the business and they routed over lines with which they had arrangements for additional mileage. (Chambers, 890.)

The car line companies did the routing absolutely and not the shipper, and I know it. *I knew a number*

of shippers who were prevented by the car line companies from routing their own citrus fruits. As an example, I went to the manager of the Arlington Heights Fruit Company in 1897 or 1898 and told him that it did not look exactly right that his business should go over the Southern Pacific when it was loaded on our line. He answered that he preferred the Santa Fe and when he made his arrangement with the Continental Fruit Express he was told it would go over the Santa Fe largely, but that the manager of the Continental Fruit Express insisted that it be routed over the Southern Pacific. That year the Arlington Heights Fruit Company controlled about 500 carloads. I went to the manager of the Continental Fruit Express and he told me that the Santa Fe could not have the business unless it would pay excess mileage amounting to $10 per car to Kansas City and $12.50 to Chicago. (Chambers, 891.) *The shippers surrendered the routing to the car line companies when they were receiving rebates.* (Chambers, 892.) The shippers never routed the business to my knowledge. (Chambers, 894.) *When I went after the business I found that the car line companies controlled it and did the routing* of the citrus traffic. (Chambers, 894.) Before we took charge the routing was controlled largely by mileage arrangements, that is to say, the money that was given for rebates. (Chambers, 896.) Previous to January, 1900, the car line companies controlled the routing through the paying of rebates to the shipper or producer. (Chambers, 901.)) It gradually got to a place where *the rebate created routed the car.* (Sproule, 915.)

Although the car lines paid the rebate some of them would pay more back if the shipment traveled over certain lines. *The car company dictated the terms to the eastern connections to a certain extent."* (Naftzger, 813.)

Respecting this routing privilege which the shippers never exercised and which was therefore never lost to them by the "suppression" of the "competi-

tion" and the "fierce rivalry" whch the court found to have previously existed among connecting carriers, Chairman Knapp of the Interstate Commerce Commission, in his dissenting opinion, said (p. 80):

"Disconnected from the privilege of diversion, it is not perceived that the legitimate value to the shipper of the right of routing is important. That right is important to the carrier; and this we may properly take into account in deciding to which of them the right belongs."

Even before a considerable volume of evidence had been introduced to show that the shipper had always sold the routing and therefore never controlled it, and that consequently the promulgation of the routing rule lost him nothing but an illegal gain, Chairman Knapp saw that this routing privilege was of absolutely no value to him if the carriers would grant diversions that he might want. Those diversions were granted.

Since the initial carriers took the routing we have been able to get the diversions wanted freely. (Stearns, 257.) As a general rule since the carriers have been routing the diversions requested by shippers have been granted.

By way of explanation to the court it may be stated here that the practice of diverting cars in transit is peculiar to the citrus traffic and has grown out of the desire of the carriers to foster and help the business in every way. As the citrus orchards are 2,000 miles or more from the central markets, much time is lost where contracts are made by correspondence. So the idea was conceived of putting the cars in motion as rapidly as they could be loaded and of effecting sales by telegraph or through eastern agents after they had

started. The car would be billed to a fictitious destination, say Chicago, and after it had been on the road two or three days the initial carrier would receive a request to divert it at La Junta to Denver or to divert it at Newton to Galveston, or to divert it at Kansas City to St. Louis, a sale having been made by correspondence or through an agent at some eastern point. After the car had gone to Denver or to Galveston or to Kansas City the expected market might fail, and eventually the car diverted from Santa Fe rails would reach, over some other line, Chicago, the original destination and the eastern terminus of the Santa Fe. It will be perceived that in such circumstances, which were very common, the Santa Fe would lose a good part of the haul to Chicago. Nevertheless, the initial carriers have afforded to the shippers every convenience in diverting these "tramp" cars.

Last year (1904) out of a total of 11,805 cars handled by the Santa Fe 7,400 were diverted from the original point of destination. Many were diverted two or three times, the average being approximately 1.8 times, aggregating a little more than one diversion for each car shipped. You do not know about the cost of telegraphing in connection with these diversions and the work and labor there is attached to the accommodation. We started in at one time to charge $2.50 for each diversion and if we had done so we would have collected over $25,000 last year. (Morton, 136-7.)

If we were all treated alike as to diversions, then I presume it would amount to the same thing whether we divert the cars or the carriers do. (McLeod, 239.)

From 40 per cent. to 60 per cent. of the orange shipments are diverted from their original desination and frequently a car is diverted three or four times. (Neimeyer, 165.)

The matter of diversions is exceptional and peculiar to the orange business; it is a courtesy and a privilege accorded by the carrier. (Sproule, 937-8.)

This year, out of 4,685 cars that have been shipped, there have been 4,344 diversions, which costs the Southern Pacific approximately 12,000 telegraphic messages. (Sproule, 945.)

Not only have the diversions requested by shippers been freely granted, but since the carriers have been routing the requests have been executed more quickly and correctly.

I should say that since 1900 we have had a decidedly better knowledge of the situation of cars so that we could divert them than we had before. (Rule, 973.)

For the season just closed (November, 1903) the Santa Fe has given about 12,000 diversions. The rule regarding diversions continued the same after we took the routing as it had been before and the fruit has been diverted more promptly than ever. (Chambers, 911.)

Precisely the same freedom of diversion has been allowed since 1900 that existed before.

From the foregoing it ought to be clear that Chairman Knapp was correct in his opinion, that the privilege of routing is of no importance to the shipper. Indeed, the witness Maud (823) stated frankly and all of the witnesses have indicated with considerable clear-

ness that the only use they have for the routing privilege is to sell it.

If, as we have shown, the shipper never routed, then the assumption of the right to route by the initial carriers, did not change existing conditions, and so did not "suppress competition either in rate or service."

As to Undue Prejudice.

Although the court, in its decision on the merits, took leave (1034)) of the several question which had been discussed by the commission and stated the sole issue to be whether the routing provision was in itself a contract for the pooling of freights, we shall nevertheless give attention to the considerations which moved the commission to its order, as the sufficiency and legality of that order, which the Circuit Court is enforcing, is necessarily in question.

In paragraph 4 of the decision of the commission of April 19, 1902, it is stated that the practice of the carriers of designating the route is in violation of the statute because it "subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage *and* gives to the carriers undue and unreasonable preference and advantage." (56.)

In its "conclusions" the commission stated that the shipper is put to a commercial disadvantage because he is prevented by the routing rule from diverting consignments; and that the granting of a given routing to one and the denial of it to another is of itself an unjust discrimination.

We have already shown that the shipper has not

been prevented from diverting his consignments; and under this heading we purpose to show that a route was not given to one shipper and denied to another not only, but also that there was no undue prejudice shown in any relation whatsoever.

In the dissenting opinion of Chairman Knapp it is pointed out as a significant fact that it was not alleged in the complaints, nor proved at the hearing, nor claimed in the argument, that any actual discrimination between shippers had resulted from the control of the routing by the defendants; and he argues that it is contradictory of the undisputed testimony to claim that the condition cannot be enforced without unjust and unreasonable discrimination. (79.)

As before stated, we intend to make clear that as a matter of fact the routing rule was in force not only without unjust and unreasonable discrimination in any particular but also that its enforcement operated to remove prejudices and discriminations.

"Under the condition of things that existed up to January 1, 1900, there was a great discrimination, and in nearly every instance Mr. Earl received better rates than any of his neighbors did. Some of the car lines received from the shippers for a consideration the privilege of routing, in some instances the shippers getting possibly all there was in it, in other cases only a small proportion. (Morton, 122.)

Since we have routed there has been no discrimination or undue preference or advantage as to one locality over another. (Morton, 129.)

It certainly has made an equality of rates. The routing rule has entirely wiped out the discrimination that was practiced prior to January 1, 1900. It has given the small shipper a chance to grow. It has taken away from the large shpiper any advantage. (Morton, 130.)

The matter of controlling the routing by the carrier is applied to all shippers alike, and I do not know of anybody that is getting any special favors. (McLeod, 250.) In acceding to the requests of shippers to route or divert we never dealt with any shipper differently from the manner in which we dealt with others. (Barnwell, 440.) In handling citrus business all shippers have been treated alike. (Barnwell, 445.)

No locality has had any privilege or advantage or preference with respect to the citrus fruit shipments that was not open to any other locality in the citrus fruit business, nor have we given any preference or advantage to any business similarly situated with the citrus fruit business. Since 1900 we have not given to one shipper a choice of route not given to another. (Bissell, 880.) The routing rule is not applied to deciduous fruit and vegetables because there is no such abuse in the deciduous fruit business. (Sproule, 935.) Since January, 1900, no preference or advantage has been given to any locality as against another town or locality, but they did exist before. (Chambers, 897.) Previous to 1900 some shippers had their goods delivered at destination cheaper than other shippers, but it is not so now. (Chambers, 898.) In routing the citrus fruit we have not given a roundabout road to one shipper and a more serviceable road to another. There is no discrimination whatever as between individuals or shipping companies or destinations. (Sproule, 924.) The application of the right to route has been made uniformly to all shippers in California so far as I have heard. (Moulton, 860.) The effect of the routing rule is that everybody gets the same rate, which, as I understand it, was the object of the Interstate Law. (Bissell, 977.) Since we took charge of the routing in 1900 no shipper of citrus fruit has had any special privilege or rate or advantage which was not open to every other shipper; and no locality has had any privilege or advantage or preference with respect to the citrus fruit shipments that was not open to any other locality in the citrus fruit business; nor have we given any preferences or advantages to any

business similarly situated with the citrus fruit business; nor have we given to one shipper a choice of route not given to another. Since we have been doing the routing every shipper pays the same rate." (Chambers, 897.)

Routings Granted to Shippers.

As the conclusion of the commission was that by controlling the routing the carriers might subject some shippers to "unjust discrimination," and as the judgment of the Circuit Court was that the assumption of the right to route by the carriers "suppressed the "fierce rivalry" and the "competition" which had before existed, we purpose to show from the record that after 1900 there were available to the shipper exactly the same routes that they had before and that their requests for routes were generally granted. It may be asked why, then, did the initial carriers assert the right? The answer is that the mere assertion of it was enough to warn the buyers of business that their contracts of purchase could not be carried out, and the result of this warning was that no contracts were made.

In his dissenting opinion Chairman Knapp of the commission pointed out that it had been found that routing had actually been given according to the requests of the shippers, and he argued that this finding by the commission was inconsistent with the charge that the routing rule was being employed to effectuate a tonnage pool. He said (81):

"If in most instances, as is admitted, this traffic was carried by the route selected by the shipper, it is difficult to see how the connecting carriers were at the same time 'pooling' it in violation of the 5th section."

In most cases we always had the routing by asking for it. (Stearns, 261.) I understood it was open to us to name intermediate points through which we might want a tramp car to go. (265.) If the shippers had paid the sum of the local rates they could have had any routing desired. (Nadal, 346.) The Santa Fe routing circular gave shippers the right to make notation on the shipping order as to what points they would like the car to pass through on the way to destination. (369.) The request for routing on behalf of A. C. Blair & Company of Cleveland was granted. (Barnwell, 410.) So, also, the request of Rudduck, Trench & Company of Los Angeles. On the request of the California Citrus Union it was given. (Barnwell, 438.) Shippers were allowed by the Southern Pacific to name the points through which they would prefer to have shipments pass. (Parkyns, 801.) This was expressed on the Southern Pacific routing circular. (801.) It is true that over the Santa Fe we have had substantially the same routing since January 1, 1900, as we had before in nearly every instance. (Maud, 827.) I cannot mention an instance in which I was injured by a routing over the Santa Fe which I did not want. (Maud, 827.) I do not recall a single time that we asked a routing from the Santa Fe and did not get it. (Moulton, 859.) I always got the route that I asked for from the Southern Pacific. (Moulton, 860.) The business is being routed today over the best roads in the country. (Bissell, 878-9.) We always routed the shipments by the most direct lines since January 1, 1900. (Chambers, 896-7.) Our routing circulars to agents carried a great deal of latitude. They took cognizance

of special facilities at different points of delivery. We took cognizance also of the desire of the shippers as to terminal deliveries. (Sproule, 921.) Since the railroads have been routing we know over what lines our cars will go. They furnish us with the routing after the cars have left. I think that in most cases where we have asked for the routing since January 1, 1900, the initial carriers have given them. (McLeod, 246.) The initial carriers post daily a statement of all the fruit cars forwarded from Southern California for the information of everyone.' (Maud, 826.)

Competition.

We have already pointed out the strange views entertained by the commission and the court as to what sort of "competition" the shippers of citrus fruits were entitled; and we have also shown that as to this illicit competition, the profits thereof went in the pockets of middlemen and did not go to the tillers of the soil and the growers of fruit. So there is no occasion in this case to express any sympathy for the toiler or to feel that he has been in any way deprived of what he had. Moreover, we shall show further that the producer of fruit never in fact routed his product, but that so far as he could get rebates he sold the routing absolutely to the private car companies. Therefore he was deprived of nothing by the routing rule which the carriers put into effect in January, 1900. On the contrary it will appear that since the routing rule has been in force he has had open to him and has used the same means of transit that were available to him before.

In addition to what we have already quoted from the court on this subject of competition we invite attention to this (1038):

"Such contract (referring to the routing provision in the joint tariff) shows upon its face a combination intended by concert of action to make and control changes in market rates * * * and in effect leaves to the arbitrament of such carrier the distribution of profits and certainly destroys so far as shippers are concerned all competition between the connecting lines."

We have already shown the "competition between the connecting lines" which was "destroyed" by the initial carriers when they dictated the routing.

It seems to have become definitely fixed in the minds of the commission and the court that the routing rule somehow operated to prevent a reduction by eastern connections, through competition, of the rate of $1.25—that is, that were it not for this rule a tariff might have been published offering a lower rate. One answer to that is that from 1886 when the rate was reduced from $1.50 to $1.25, down to 1900, during all of which time the shippers had the privilege of routing and there existed the wildest kind of "competition," the tariff rate of $1.25 was not reduced. If fourteen years of this "competition" did not serve to reduce a rate which the evidence shows to be a very low one, how can it be argued that immediately upon taking charge of the routing in 1900 the carriers denied to the shippers a reduction which they would otherwise receive?

A second answer is that no amount of legal competition on the part of the eastern connections could reduce the rate. No eastern connection could of it-

self publish a joint tariff. The very name imports that a joint tariff must be made by contract. No eastern connection could compel either the Santa Fe or the Southern Pacific to enter into a joint contract with it at a rate below $1.25. If the Santa Fe or the Southern Pacific felt that the rate of $1.25 was low enough no power could compel it to become a party to a joint tariff fixing a lower rate. This is why no lower tariff rate was promulgated during the fourteen years of what the court has termed (1039) "that fierce rivalry" which "existed between their eastern connections before the routing rule was adopted;" for it is in evidence (136) that the rate was put in to nurture the business and was considered very low at the time and is considered very low today by those who understand the business.

On the other hand, there was nothing before 1900 to prevent either the Santa Fe or the Southern Pacific Company, if it thought the rate could safely be reduced, from entering into a joint tariff with any eastern connections. That is exactly the condition which exists today and has existed ever since the routing rule was adopted. Either the Santa Fe or the Southern Pacific Company may now, if it thinks it desirable to do so, promulgate a tariff with its connections. And there is not a syllable in the record to show that either of these companies is under any agreement not to do this or in any way bound to any obligation except to maintain the lawful rate as long as it is lawful—and this the law requires.

The condition since January, 1900, has been in this relation just exactly what it was before, and no infer-

ences by the commission or decrees based upon such inferences are enough to gainsay or refute the fact.

Under the routing rule there has been every sort of competition except the illegal kind—except that "fierce rivalry" to which the court referred.

Business to connections has been divided on the basis of equity and justice. We have tried to give to the lines that performed the best service the most of the business. The element that controls in the performance of this business is chiefly good service. We give business going to Pittsburg to the Pittsburg line which can take it to Pittsburg most expeditiously, and to Detroit to the line that can handle it to Detroit the quickest; and the business is divided all through on the basis of good service. We must get good service from our eastern connections in order to get our share of the business in California which we are always looking after. Another consideration is to get returning cars back quickly. (Morton, 126.)

Unless there is some good reason to the contrary we usually meet the rates of our competitors. There are numerous instances in which the Santa Fe road has changed the rate agreed upon with the Southern Pacific without consulting that company, and I think there are instances in which it has so changed the citrus tariff. (Chambers, 184-5.)

There is competition between the Southern Pacific and the Santa Fe in service. (Chambers, 215.)

The witness Nadal for the complainant, already referred to as a purloiner of the private records of the Southern Pacific Company, said that it is true that while the initial carriers have been routing there has been competition among connecting carriers, for the initial carriers would not route over lines giving poor service. He stated also that the carriers giving the best service got the business. (346-7.)

There is competition under existing conditions as much as there was before except in the fact of getting rebates. The carriers have to give good service. They have to give the citrus fruit preferred

attention. They have to satisfy the shippers and the receivers of fruit as to terminal facilities. (Bissell, 885.)

We solicit shipments through our agents from time to time so that there is competition between the Southern Pacific and the Santa Fe. (Sproule, 959.) We endeavor to meet and beat the Santa Fe time if we can although that has the short line. It is because of competition that we make diversions." (Sproule, 960.)

In working out its belief that the routing rule has somehow (not stated or disclosed) prevented the reduction of the tariff rate of $1.25, the court dissevers a question and answer from the context of the testimony of Paul Morton and employs it thus (1039):

"The sole immediate aim of the routing rule was to put the shippers of citrus fruit in a position where their patronage could not possibly be competed for by defendants' eastern connections, and Mr. Morton himself explains the matter briefly, but with great clearness, in the following extracts already quoted from his testimony:

'Q. If the initial carrier assumed the routing of the shipment the connecting carrier would be in no position to bid for the business of a connecting line, would it?

'A. No. When we took the routing of the business into our hands the eastern connections had to do business with us instead of the car company or the shipper.' "

Then the court says further (1039):

"Said rule, however, not only strikes down rebates, but destroys all the competition which section 5 of the Commerce Act was designed to protect, namely, direct competition both in rate and service."

We have just quoted abundantly to show that there was competition in service.

The question and answer taken from Mr. Morton's

testimony have relation to illegal competing for business—to the giving of rebates—to the unlawful practices already stated at large. The opinion of the court itself shows that Mr. Morton had been talking (1026) of the secret cutting of rates "in violation of the Interstate Commerce Act" and "in violation of our published tariff;" and the record (122) shows that all his testimony about maintaining rates referred to the legal rates; that it was against the discrimination which had existed; that it was about the selling of business to the car line companies for a consideration; that the business had been sold to the highest bidder; that the routing was taken in charge so that they would be no longer able to sell business and get rebates and that the grafting shippers admitted this in private; that the "sole object in assuming the control of the routing was to put an end to this rebate and cutting of the legal published tariffs."

And yet, in the face of all this and other testimony of Mr. Morton, the extract mentioned was cut out of his deposition and made to show that he intended that no connecting line should *lawfully* compete for business. There seems to run through the opinion of the commission and the opinion of the court a strained determination to establish something in this relation which did not in fact exist and which there was no evidence whatever to support. Of course we take the view that this was due to unconscious bias. But from whatever source it proceeds, the imputation—for it does not go beyond this—is unjust to the defendants.

There has been competition with respect to the icing charges which the shippers have had to pay, for

they are about $15 a car less than they were on shipments to Chicago and New York. (Chambers, 897.)

There has been competition in the quick settlement of damages accruing on delayed or injured fruit. (Chambers, 203-4, 896; Stubbs, 291-2; Bissell, 879; Sproule, 927, 939.)

There has been competition in the granting of preferred deliveries at points of consignment, and the merest wish of the shippers in this regard has been satisfied in every instance. (Naftzger, 167; Stearns, 261; McLeod, 251; Nadal, 334-6-7; Barnwell, 412-3, 447.) Indeed, the Southern Pacific routing circular instructed agents to follow the preferences of the shipper as to deliveries (691); and the Santa Fe circular directed agents to grant the deliveries that shippers might request. (369.) Although the commission stated that it did not appear in the testimnoy that any delivery requested by a shipper had been denied, still it felt under the obligation of expressing its apprehension that the initial carrier might route freight for delivery over another terminal road. (76.)

There has been competition in the respect that the Santa Fe Company has ceased to do business with private car lines and has, upon the importunities of the shippers, invested four millions of dollars in equipment of its own.

The Routing Circulars.

The commission found, as quoted by the court in its opinion on the demurrers (1022), that the routing circular of the Southern California Railway showed "that the orange shipments are forwarded by the initial carrier so as to give certain percentages of the traffic

to connecting lines." On that finding, and on the further finding quoted by the court (1022) that "reason is found for the belief" that the intent of the initial carriers was not to suppress the practice of giving rebates but "to give effect to the tonnage division before stated between their connections," the court overruled the demurrer of the defendants. After the decision on the demurrer and the joinder of issue the defendants introduced voluminous evidence to show what was their intent and what was in reality the effect of their action.

It will therefore be well to take a passing look at the routing circulars or distribution sheets which were issued from time to time as conditions required. The Santa Fe's routing circular for 1901-2 may be seen at pages 368, *et seq.*, and the Santa Fe circular for 1902-3 may be seen at pages 384, *et seq.* These circulars instructed agents that if the shipper insisted upon naming the routing to charge the local rate to the junction point on the Santa Fe System and make notation of the fact upon the way bill. (385.) It also instructed agents to stamp on the way bill going with the car a notation that to enable it to guarantee the through rate the absolute right of routing through to destination was reserved to the initial carrier. (385.)

The routing circular of 1902-3 was changed to instruct the shippers to give to consignees the deliveries asked for. (Barnwell, 407.)

The provision of paragraph 12 of the circular of December 1, 1902, that Armour cars would not be placed for routing on the Santa Fe meant that the Santa Fe had equipment enough of its own and that

it would not pay mileage or per diem on Armour cars taken from the Southern Pacific. (Barnwell, 408.)

The paragraph of the Santa Fe routing circular directing that shipments to given points reached by the Santa Fe must follow its tracks to destination was departed from when the needs of the shipper required it and not followed farther than good service would permit. (Barnwell, 409.)

Under paragraph 7 of the routing circular shippers were given the deliveries they asked for. (Barnwell, 409.) *The provision in the circulars that they be kept private was for the purpose of preventing canvassers for eastern connections from ascertaining how the fruit was being handled* and from thus making rebate arrangements, and it was also the intention to be saved from the importunities and annoyances of connections for a larger allowance of traffic. (Barnwell, 441.) The Southern Pacific routing circular stated to the agents that it would be difficult to follow the percentages given and that the percentages would be liable to change at any time. It also instructed the agents to give the deliveries requested by the shipper. (601.) All the routing circulars provided that the shipper might name points through which he would have the shipment pass. (801.)

Such, in brief, were the documents from which the commission concluded that there was a fixed understanding and agreement with eastern connections that they should have "specific percentages."

SPECIFICATIONS OF ERROR.

THE COURT ERRED:

FIRST. IN OVERRULING THE DEMURRER FILED BY EACH OF THE APPELLANTS TO THE BILL OF COMPLAINT OF SAID COMPLAINANTS.

SECOND. IN FINDING THAT THE ORDER OF THE INTERSTATE COMMERCE COMMISSION IN QUESTION WHICH IN EFFECT REQUIRES EACH OF APPELLANTS TO ROUTE SHIPMENTS OF CITRUS FRUIT FROM SOUTHERN CALIFORNIA TO VARIOUS DESTINATIONS, AS REQUESTED BY THE SHIPPER THEREOF, AT THE JOINT RATE FOUND IN THE JOINT TARIFFS MADE BY SAID APPELLANTS AS INITIAL CARRIERS WITH CONNECTING CARRIERS, UPON THE EXPRESS CONDITION THAT SUCH INITIAL CARRIERS SHOULD HAVE THE RIGHT TO ROUTE UNDER SUCH JOINT RATE (THUS GIVING SUCH SHIPPER THE BENEFIT OF SUCH JOINT RATE AND DEPRIVING THE INITIAL CARRIERS, THE APPELLANTS, OF THE CONDITION OR CONSIDERATION UPON WHICH SUCH JOINT RATE WAS MADE), WAS A LAWFUL ORDER OR REQUIREMENT OF SAID COMMISSION, AND IN ENJOINING EACH OF SAID APPELLANTS TO OBEY THE SAME.

THIRD. IN FINDING AND DECLARING IN ITS DECREE THAT THE FOLLOWING PROVISION IN SAID JOINT TARIFF, TO-WIT; "IN GUARANTEEING THE THROUGH RATE NAMED HEREIN, THE ABSOLUTE AND UNQUALIFIED RIGHT OF ROUTING BEYOND ITS OWN TERMINAL IS RESERVED TO THE INITIAL CARRIER GIVING GUARANTEE," IS STILL IN FORCE AND EFFECT SINCE IT APPEARS FROM THE EVIDENCE THAT IN THE JOINT TARIFF EFFECTIVE JULY 20, 1903, AND BEFORE THE HEARING, SUCH PROVISION WAS SUPERSEDED BY THE FOLLOWING PROVISION, TO-WIT: "THE JOINT TARIFFS AND RATES HERE-

IN NAMED ARE MADE AND ENTERED INTO UPON THE EXPRESS CONDITION THAT THE INITIAL CARRIER SHALL HAVE AND EXERCISE THE SOLE AND EXCLUSIVE RIGHT OF ROUTING ALL SHIPMENTS UNDER SAID JOINT RATES BEYOND ITS TERMINUS, AS WELL AS UPON OTHER CONDITIONS, PROVISIONS AND STIPULATIONS HEREINAFTER SET FORTH."

FOURTH. IN FINDING AND DETERMINING THAT SAID ROUTING PROVISION SO AGREED UPON AND EMBODIED IN SAID TARIFF WAS OR IS AN AGREEMENT OR COMBINATION FOR THE POOLING OF FREIGHTS OF ANY DIFFERENT AND COMPETING RAILROADS AND WAS OR IS IN VIOLATION OF SECTION 5 OF THE INTERSTATE COMMERCE ACT MENTIONED IN SAID BILL OF COMPLAINT.

FIFTH. IN FINDING THAT THE ALLEGATIONS OF THE COMPLAINT HEREIN ARE TRUE, EXCEPT TO THE EXTENT THAT SUCH ALLEGATIONS ARE ADMITTED IN AND BY THE ANSWERS OF THESE APPELLANTS.

SIXTH. IN MAKING ANY FINDINGS IN REFERENCE TO ANY ALLEGATIONS OF FACT IN THE COMPLAINT HEREIN, EXCEPT TO THE EXTENT OF SUCH ALLEGATIONS OF FACT AS ARE INVOLVED IN THE LAWFULNESS OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION HEREIN AS MADE BY SAID COMMISSION.

SEVENTH. IN MAKING ANY FINDINGS OF FACT OTHER THAN THOSE FOUND BY THE COMMISSION, TO-WIT: IN FINDING THAT THE ROUTING PROVISION IN QUESTION WAS MADE BY AGREEMENT BETWEEN DIFFERENT AND COMPETING CONNECTING CARRIERS FOR THE PURPOSE OF POOLING FREIGHTS OF DIFFERENT AND COMPETING RAILROADS, IN VIOLATION OF SECTION 5 OF THE INTERSTATE COMMERCE ACT.

EIGHTH. IN CONSTRUING SECTION 5 OF THE INTERSTATE COMMERCE ACT AS IN EFFECT FORBIDDING THE INI-

TIAL CARRIER FROM EXERCISING THE RIGHT TO ROUTE OR BY THAT MEANS FROM DIVIDING THIS TRAFFIC BETWEEN CONNECTING CARRIERS IN SUCH MANNER AS SUCH INITIAL CARRIER SHOULD DEEM FIT.

NINTH. IN HOLDING THAT APPELLANTS, OR ANY OF THEM, IN MAKING OR ENFORCING THE SAID ROUTING PROVISION WERE OTHERWISE THAN IN THE EXERCISE OF THEIR RIGHT AND AUTHORITY ARISING BY LAW IN THE PREMISES.

TENTH. IN HOLDING THAT THE APPELLANTS, OR ANY, OR EITHER, OF THEM, IN MAKING AND ENFORCING THE SAID ROUTING PROVISION WERE OTHERWISE THAN IN THE EXERCISE OF THEIR CONTRACTUAL RIGHT AND AUTHORITY WITHIN AND UNDER THE LAW IN THE PREMISES.

ELEVENTH. IN DECREEING THAT APPELLANTS, OR ANY, OR EITHER OF THEM, OR SEVERALLY, OR OTHERWISE, OR AT ALL, FROM AND AFTER THE MAKING AND ENTERING OF SAID DECREE, ARE ENJOINED AND RESTRAINED FROM FURTHER CONTINUING ANY VIOLATION OR DISOBEDIENCE OF THE ORDER OF SAID COMMISSION, AND ENJOINING AND REQUIRING THE APPELLANTS, OR ANY OR EITHER OF THEM, TO FULLY OBEY SUCH ORDER IN ANY RESPECT OR IN ALL RESPECTS.

TWELFTH. IN RULING THAT COMPLAINANT WAS ENTITLED TO RECOVER ANY COSTS HEREIN FROM APPELLANTS OR ANY OR EITHER OF THEM.

THIRTEENTH. IN HOLDING AND DECLARING THAT THE ORDER OF THE INTERSTATE COMMERCE COMMISSION, SET FORTH IN SAID DECREE, WAS OR IS A LAWFUL ORDER OR REQUIREMENT, BECAUSE IT APPEARS:

(1) THAT SAID ORDER IS UNLAWFUL AND UNAUTHORIZED UNDER THE FACTS STATED IN THE REPORT OF SAID COMMISSION;

(2) SAID ORDER IS UNAUTHORIZED AND UNWARRANTED UNDER THE FACTS DISCLOSED IN THIS CAUSE;

(3) FROM THE UNDISPUTED EVIDENCE THAT THE ROUTING PROVISION IN QUESTION WAS INSISTED UPON BY THE INITIAL CARRIERS THE APPELLANTS IN MAKING A JOINT TARIFF RATE WITH THEIR VARIOUS CONNECTIONS IN ORDER TO PROTECT SUCH INITIAL CARRIERS AGAINST THE UNLAWFUL PRACTICES OF THEIR CONNECTIONS IN THE SECRET AND UNLAWFUL CUTTING OF THE JOINT TARIFF RATES WHILE IN FORCE AND IN THE PAYING OF UNLAWFUL REBATES, PARTICULARLY TO THE TWO COMPLAINANTS BEFORE THE SAID COMMISSION;

(4) THAT THE ORDER OF SAID COMMISSION IS UNLAWFUL AS BEING TOO BROAD. IT IS NOT CONFINED TO ANY ALLEGED VIOLATION OF THE INTERSTATE COMMERCE ACT STATED OR FOUND BY SAID COMMISSION. IT IS LEGISLATIVE IN ITS NATURE AND IS NOT CONFINED TO THE PARTIES WHO APPEARED BEFORE THE COMMISSION. IT IS WHOLLY UNAUTHORIZED;

(5) THAT SAID COMMISSION ERRED IN CONSTRUING AND APPLYING SECTION 6 OF THE INTERSTATE COMMERCE ACT IN RULING THAT IT PROHIBITED THE INITIAL CARRIERS FROM IMPOSING AS A CONDITION TO THE MAKING OF JOINT RATES NAMED THE RIGHT OF SUCH CARRIERS TO ROUTE SHIPMENTS OVER CONNECTING LINES.

(6) THAT SAID COMMISSION ERRED IN CONSTRUING SECTION 3 OF THE INTERSTATE COMMERCE ACT IN RULING THAT THE ROUTING PROVISION MADE AS THE CONDITION OF SAID JOINT RATES, AND WHICH THE INITIAL CARRIERS WERE NOT OBLIGED UNDER THE LAW TO MAKE, SUBJECTED THE SHIPPERS OF CITRUS FRUIT TRAFFIC TO ANY UNREASONABLE PREJUDICE AND GAVE TO SUCH INITIAL CARRIERS AN UNDNE ADVANTAGE, IN VIOLATION OF SAID SECTION.

(7) That said commission erred in its conclusion that under the facts stated in its report there was reason to believe that the routing provision was enforced by the initial carriers so as to divide this traffic between connecting lines.

(8) That the commission erred in adjudging the routing provision in the joint tariff to be invalid, and in making its order in respect to the same, because the connecting carriers who were parties to the joint agreement were not made parties to the proceedings before the commission and were deprived of all opportunity of a hearing. Such an order would be inequitable.

(9) That the commission erred in finding that the right of the initial carrier to route was in violation of any supposed right of these shippers to divert this traffic while in transit.

POINTS AND AUTHORITIES.

I.

THIS IS A SPECIAL PROCEEDING IN WHICH THE JURISDICTION OF THE CIRCUIT COURT IS CONFINED TO DETERMINING THE LAWFULNESS OF THE ORDER OF THE COMMISSION, AND IF FOUND TO BE LAWFUL TO ENJOIN OBEDIENCE THERETO, OTHERWISE TO DISMISS THE BILL OR PETITION.

Section 16, pages 3165 and 3166, U. S. Compiled Statutes, 1901, Vol. 3.

(a) If the commission have misconstrued or misapplied the provisions of this law their order is invalid.

Int. Com. Com. v. *L. V. R. R. Co.*, 74 Fed., 784.

D. G. H. & M. R. R. Co. v. *Int. Com. Com.*, 74 Fed., 803.

Int. Com. Com. v. *D. L. & W. R. R. Co.*, 64 Fed., 723.

East Tenn., etc., R. R. v. *Int. Com. Com.*, 181 U. S., 1.

(b) The facts found by the commission were insufficient to warrant its conclusions and orders and it is therefore evident that the commission erred in applying the law to the case before them.

L. & N. R. R. v. *Behlmer*, 175 U. S., 674, 675, and 676.

(c) The evidence in the lower court showed that

the conclusion of the commission concerning the adoption of the routing provision in the joint tariff was erroneous, and its order based upon such conclusion was therefore invalid.

(d) It appears from the report of the commission that it misconstrued and misapplied section 6 of the Interstate Commerce Act in holding that carriers could not impose as a condition for the making of joint tariffs the right of the initial carrier in any event to route shipments under such joint rates.

See subdivision II of argument.

(e) The commission erred in holding that the routing provision in question made on condition or in consideration of the making the joint tariff rate subjected the shippers to undue prejudice and gave initial carriers an undue advantage.

Ilwaco Rly. & Nav. Co. v. *Oregon, etc., Ry. Co.*, 57 Fed., 673 and 676.

Little Rock, etc., R. R. v. *East. Tenn., etc., R. R.*, 47 Fed., 771 and 775.

Manheim Ins. Co. v. *Erie W. Trans. Co.*, 75 N. W., 602.

And subdivision 10 of argument.

(f) The commission erred in its conclusion under the facts that a tonnage pool of this traffic as between connecting carriers not defendants was established.

See

Subdivision VI of argument.

II.

THE SUPPOSED RIGHT OF THE SHIPPER TO ROUTE IS NEITHER RECOGNIZED NOR PROTECTED BY ANY PROVISION OF THE INTERSTATE COMMERCE ACT. IT IS PURELY A MATTER OF AGREEMENT.

Hastings v. *Pepper*, 11 Pick., 43.

Snow. v. *I. B. & W. R. R. Co.*, 109 Ind., 422, 425; s. c., 9 N. E., 702 and 703.

C. I. & L. R. R. Co. v. *Woodward*, 72 N. E., 558.

White v. *Ashton*, 51 N. Y., 280, 284.

Hinckley v. *N. Y. C. & H. R. R. Co.*, 56 N. Y., 429, 433, 434.

Ind. R. R. Co. v. *Remy*, 13 Ind., 518.

Patten v. *U. P. R. R. Co.*, 29 Fed., 591.

Post. v. *So. Ry.* 103 Tenn., 220; s. c., 52 S. W., 301.

Lowe v. *Seaboard Air Line Ry. Co.*, 41 S. E., 297.

III.

AS THE ASSERTION OF THE RIGHT TO ROUTE BY THE INITIAL CARRIER CONTRARY TO THE WISHES OF THE SHIPPER IS NOT "SOMETHING DONE OR OMITTED TO BE DONE IN VIOLATION OF THE PROVISIONS" OF THE INTERSTATE COMMERCE ACT, OR ANY LAW COGNIZABLE BY THE COMMISSION, THE COMMISSION HAD NO AUTHORITY TO MAKE THE ORDER IN QUESTION SINCE ITS POWER AND JURISDICTION IS CONFINED TO INVESTIGATIONS CONCERNING SOMETHING DONE OR OMITTED TO BE DONE IN VIOLATION OF THE PROVISIONS OF THAT LAW.

Sections 13, 14 and 15 Interstate Commerce

Law, pages 3164 and 3165 U. S. Compiled Statutes, 1901, Vol. 3.

Wannan v. *Scottish Cent. Ry. Co.*, 1 Nev. & MacN. (Railway and Canal Traffic Cases), 237, 241 and 242.

Bennett v. *Manchester, S. & L. Ry. Co.*, 1 Railway and Canal Traffic Cases, 288; s. c., 6 C. B. (N. S.), 707.

IV.

AGREEMENTS BETWEEN CONNECTING CARRIERS CONCERNING THE MAKING OF JOINT RATES AND CONDITIONS APPLICABLE THERETO ARE PURELY MATTERS OF VOLUNTARY AGREEMENT BETWEEN SUCH CARRIERS.

Kentucky & I. Bridge Co. v. *L. & N. Ry. Co.*, 37 Fed., 629, 630 and 633.

Elliott on Railroads, Vol. 4, Sec. 1685.

Little Rock, etc., R. R. v. *St. Louis, etc., Ry. et al.*, 41 Fed., 559.

Little Rock, etc., R. R. v. *St. Louis, I. M., etc., R. R.*, 59 Fed., 400; s. c., in C. C. A., 63 Fed., 775.

Oregon Short Line, etc., R. R. v. *Nor. Pac. R. R.*, 51 Fed., 465; affirmed in C. C. A., in 61 Fed., 158.

St. Louis Drayage Co. v. *L. & N. R. R. Co.*, 65 Fed., 39.

Prescott, etc., R. R. v. *A., T. & S. F. Ry.*, 73 Fed., 438.

G. C. & S. F. Ry. v. *Miami S. S. Co.*, 86 Fed., 407.

L. & N. R. R. v. *West Coast, etc., Co.*, 198 U. S., 497, 498.

V.

BEYOND THE REQUIREMENT THAT SUCH AGREEMENTS OR TARIFFS SHALL BE FILED WITH THE COMMISSION AND THE TARIFFS MAY BE REQUIRED TO BE PUBLISHED AS THE COMMISSION MAY DETERMINE, THEY ARE NOT SUBJECT TO ANY REGULATION OR CONTROL BY THE COMMISSION; NOR ARE THEY OTHERWISE AFFECTED BY ANY PROVISION OF THE INTERSTATE COMMERCE ACT. NO PROVISION IN THAT LAW FORBIDS OR MAKES UNLAWFUL THE ROUTING PROVISION WHICH WAS IMPOSED BY THE INITIAL CARRIERS AS A CONDITION OF THEIR MAKING OR ENTERING INTO THE JOINT RATE IN QUESTION.

Section 6 Interstate Commerce Law, p. 3157 U. S. Compiled Statutes, 1901, Vol 3.

Int. Com. Com. v. *R. R. Co.*, 167 U. S., 504, 505 and 506.

See subdivision II of argument.

C. N. O. & T. P. R. R. v. *Int. Com. Co.*, 162 U. S., 197.

Nicholson et al. v. *Great Western R. R.*, 7 C. B. (N. S.), 755; s. c., 1 Nev. & MacN., 149.

Int. Com. Com. v. *Alabama Midland Ry.*, 74 Fed., 723, 724.

Int. Com. Com. v. *Western & A. R. R.*, 93 Fed., 91.

Int. Com. Com. v. *Western & A. R. R.*, 88 Fed., 196.

VI.

NEITHER THE COMMISSION NOR THE COURT COULD MAKE A DIFFERENT AGREEMENT OR CONTRACT FOR THESE CARRIERS THAN THE ONE MADE BY SUCH CARRIERS AND THE ATTEMPT OF THE COMMISSION TO KEEP IN FORCE THE JOINT RATE AN STRIKE OUT THE CONDITION OR CONSIDERATION THEREFOR WOULD BE EQUIVALENT TO MAKING A NEW AGREEMENT FOR THE PARTIES WHICH THEY DID NOT DESIRE TO MAKE.

Little Rock, etc., R. R. v. *St. Louis, etc., R. R.*, 63 Fed., 779, 780.

Southern Pacific Co. v. *C. F. & I. Co.*, 101 Fed., 779, 786.

Little Rock, etc., R. R. v. *St. Louis, etc., R. R.*, 41 Fed., 559.

Pullman Car Co. v. *Mo. Pac. Ry.*, 115 U. S., 587.

A., T. & S. F. Ry. v. *D. & N. O. R. R.*, 110 U. S., 682, 683.

Express Cases, 117 U. S., 1, and 29.

VII.

ANY RESTRICTION UPON THE SUPPOSED RIGHT OF THE SHIPPER TO DIVERT HIS SHIPMENT WHILE IN TRANSIT WOULD NOT BE IN VIOLATION OF THE INTERSTATE COMMERCE LAW. THE PRIVILEGE OF DIVERTING THIS TRAFFIC, AS PRACTICED BY THE SHIPPERS THEREOF, WAS MERELY A CONCESSION GRANTED BY THE CARRIERS TO WHICH THE SHIPPERS WERE NOT ENTITLED AS A MATTER OF RIGHT.

Pinnix v. *C. & S. R. R.*, 66 N. C., 34 and 41.

Ellis v. *Willard*, 9 N. Y., 529.
Violett v. *Stettinius*, 5 Cranch. (C. C.), 559; 28 Fed. Cas. No. 16,953.
Braithwaite v. *Power*, 48 N. W., 354.
Hutchinson on Carriers (2 Ed.), Sec. 444a.
See subdivision IV of argument.

VIII.

THE INITIAL CARRIERS SHOULD HAVE THE RIGHT TO ROUTE UNDER THE JOINT TARIFFS OR JOINT THROUGH RATES. THE CONDITION IN QUESTION WAS LAWFUL AND VALID AND FACILITATED TRANSPORTATION.

See reasons set forth in
Post v. *So. Ry. Co.*, 103 Tenn., 220; s. c., 52 S. W., 301.
Subdivision V of argument.

IX.

THE EVIDENCE CLEARLY SHOWS THAT THE ROUTING PROVISION WAS PUT INTO JOINT TARIFFS AT THE INSTANCE ALONE OF THE INITIAL CARRIERS IN ORDER TO PUT A STOP TO ILLEGAL PRACTICES OF CERTAIN CONNECTING CARRIERS IN PAYING UNLAWFUL REBATES, PARTICULARLY TO THE TWO COMPLAINANTS BEFORE THE COMMISSION. IT WAS NOT THE RESULT OF ANY AGREEMENT BETWEEN ANY COMPETING CONNECTING CARRIERS TO EFFECT A DIVISION OF THIS TRAFFIC BETWEEN THEM UPON AN AGREED RATIO OR BASIS. CONNECTING CARRIERS WERE NOT ADVISED AS TO HOW THIS TRAFFIC WAS OR WOULD BE DIVIDED OR ROUTED OVER CONNECTING LINES.

See evidence referred to at large in the opinion of the lower court.

See, also, Sproule, 917, 918, 919, 923, 931 to 933; Ripley, 821-2; Morton, 122, 125, 126, 127, 129; Chambers, 209, 888-890, 893, 894; Bissell, 863-4; 869-70, 875-6, 878-9; Barnwell, 414 to 424, 440, 443; Parkyns, 233-4, 272.

X.

IT WAS NOT ALLEGED IN THE COMPLAINTS BEFORE THE COMMISSION THAT THE ROUTING PROVISION WAS ADOPTED TO CARRY OUT ANY PRETENDED ILLEGAL AGREEMENT BETWEEN THE CONNECTING LINES; NOR DID THE COMMISSION CONCLUDE THAT THE ARRANGEMENT WAS ILLEGAL UNDER THE POOLING CLAUSE OF THE INTERSTATE COMMERCE LAW.

See paragraphs X, XII, and XIV of Complaint, Record pages 16, 17 and 18, and Conclusion in report of Commission, found in Record, p. 74.

See, also, subdivision VI of argument.

XI.

SECTION 5 OF THE INTERSTATE COMMERCE ACT DOES NOT PROHIBIT A MERE DIVISION OF TRAFFIC BETWEEN CONNECTING LINES, EVEN IF COMPETITIVE. IT ONLY CONCERNS AGREEMENTS FOR A DIVISION OF RECEIPTS OR EARNINGS WHICH ARE TO BE COMBINED OR POOLED AND AFTERWARDS DISTRIBUTED UPON AN AGREED PROPORTION OR RATIO.

Sec. 5 Interstate Commerce Law, p. 3156 U. S. Compiled Statutes, 1901, Vol. 3.

Subdivision VII of argument.

U. S. v. *Trans. Missouri Frt. Association,* 58 Fed., 65.

XII.

THE WORD "FREIGHTS" IN SECTION 5 HAS A MEANING AKIN TO "EARNINGS" AS IT IS USED IN THE SAME CONNECTION.

Vol. 4 Words and Phrases Judicially Defined, pp. 2973, 2974, 2975 and 2976.

3 Kent's Comm. (12th Ed.), p. 219.

The Main v. *Williams,* 152 U. S., 129.

Giles et al. v. *The Cynthia,* 1 Pet. Admr., 203; Case No. 5424, Vol. 10 Federal Cases, pp. 369, 370.

Poland et al. v. *The Spartan,* 1 Ware, 130; Case No. 11, 246; Vol. 19 Federal Cases, pp. 912, 914.

Lord v. *Neptune Ins. Co.,* 10 Gray, 112, 113.

It is associated with "earnings" and has kindred meaning.

Shenley's Appeal, 70 Pa. St., 101, 102.

Hadley v. *Perks,* L. R., 1 Q. B., 455.

Lewis' Sutherland on Statutory Construction, Secs. 414, 415 and 416.

Holman's Appeal, 106 Pa. St., 502, 507.

Newport News Co. v. *U. S.,* 9 C. C. A., 579; s. c., 61 Fed., 488.

XIII.

THERE WAS NO CASE STATED IN THE REPORT OF THE COMMISSION OF ANY UNDUE PREFERENCE EXISTING AS BETWEEN SHIPPERS OR IN RESPECT TO THIS TRAFFIC AS COMPARED WITH OTHER TRAFFIC, IF ANY, IN COMPETITION. THE EVIDENCE SHOWS THAT THIS TRAFFIC WAS GIVEN A PREFERENCE IN MANY RESPECTS OVER ALL OTHER KINDS OF TRAFFIC.

XIV.

TO JUSTIFY A FINDING OF UNDUE PREFERENCE EITHER AS BETWEEN SHIPPERS OR TRAFFIC IT MUST BE SHOWN THAT THEY COME IN COMPETITION WITH EACH OTHER SO THAT INJURY RESULTS TO THE ONE BY REASON OF THE PREFERENCE GIVEN THE OTHER.

See Subdivision VIII of Argument.

Int. Com. Com. v. *B. & O. R. R.*, 43 Fed., 37.

U. S. v. *C. & N. W. Ry.*, 127 Fed., 785.

Hozier v. *Caledonian Ry.*, 1 Nev. & MacN., 27.

Int. Com. Com. v. *B. & O. R. R.*, 145 U. S., 282, 283, 284.

Nicholson v. *Great Western Ry.*, 1 Nev. & MacN., 150.

Lees, et al., Lancashire, etc., R. R., 1 Nev. & MacN., 352, 366.

Nicholson, et al. v. *Great Western Ry.*, 1 Nev. & MacN., 121.

The Law Relating To Railway And Canal Traffic by Boyle & Waghorn, Vol. 1, pp. 158, 159.

Phipps, et al. v. *London & N. W. R. R.*, Law. Rep., Q. B. Div., 1893, Vol. 2, p. 236.

XV.

AS THE INITIAL CARRIER, BY MAKING A JOINT RATE WHICH UNDER THE LAW IT COULD NOT BE COMPELLED TO MAKE, AFFORDS THE SHIPPER A CONCESSION, IT HAS THE RIGHT TO STIPULATE FOR THE CONSIDERATION OR CONDITION UPON WHICH SUCH JOINT RATE SHALL BE OFFERED, AND IN IMPOSING THIS CONDITION IT DID NOT GIVE ITSELF AN UNJUST ADVANTAGE OR SUBJECT THE SHIPPERS OF THIS TRAFFIC TO AN UNDUE DISADVANTAGE. IT IS IDENTICAL WITH A CASE IN WHICH THE CARRIER AFFORDS TO THE SHIPPER RATES FOR CARRIAGE AT "OWNER'S RISK" MUCH LESS THAN RATES APPLICABLE TO CARRIAGE AT "CARRIER'S RISK."

Manheim Ins. Co. v. *Erie W. Trans. Co.*, 75 N. W., 602.

Post v. *Southern Ry. Co.*, 103 Tenn., 220; s. c., 52 S. W., 301.

See Argument.

XVI.

THE JOINT THROUGH RATE IS APPLICABLE WHERE THE CARRIER EXERCISES THE RIGHT TO ROUTE. THE SUM OF THE LOCALS IS THE THROUGH RATE APPLICABLE WHERE THE SHIPPER EXERCISES THE RIGHT TO ROUTE.

See Opinion of Lord Esher in *Didcot, etc., R. R.* v. *Gt. Western Ry.*, 10 Railway & Canal Traffic Cases, 5.

Also opinion of Rigby, L. J., in same case, pp. 7 and 8.

XVII.

THE ORDER OF THE COMMISSION IS TOO BROAD TO BE SUPPORTED UPON THE GROUND THAT AN UNDUE PREFERENCE MIGHT BE MADE BY THE CARRIER OR UPON THE GROUND THAT THE ROUTING PROVISION WAS ADOPTED TO EFFECTUATE A DIVISION OF TRAFFIC BETWEEN CONNECTING CARRIERS. THE ORDER IS NOT RESPONSIVE TO OR CONFINED TO ANY FINDINGS IN THE CASE UPON THE POINTS STATED IN THE REPORT OF THE COMMISSION AND IS THEREFORE UNLAWFUL.

D. G. H. & M. R. R. v. *Int. Com. Com.*, 74 Fed., 803, 840, and 841.

East. Tenn. R. R. v. *Int. Com. Com.*, 181 U. S., 1, 23 and 26.

XVIII.

THE ORDER IN QUESTION IS UNLAWFUL BECAUSE LEGISLATIVE IN ITS NATURE. IT IS NOT CONFINED IN FAVOR OF THE COMPLAINANTS NOR TO THE CASE BEFORE THE COMMISSION BUT IT IS INTENDED GENERALLY TO CONTROL THE CONDUCT OF THE CARRIERS IN ALL FUTURE CASES AND CONTROVERSIES AND IS SUCH AN ORDER AS THE COMMISSION HAS NO AUTHORITY TO MAKE.

See Argument, Subdivision XI.

Int. Com. Com. v. *C. N. O., etc., R. R.*, 76 Fed., 184.

Farmers' L. & T. Co. v. *Nor. Pac. R. R.*, 83 Fed., 268.

Int. Com. Com. v. *Railway Co.*, 167 U. S., 501.

Int. Com. Com. v. *Alabama, etc., R. R.*, 168 U. S., 161, 162.

Texas & Pac. R. R. v. *Int. Com. Com.*, 162 U. S., 216.

XIX.

THE RESULT OF THE ORDER IS TO GIVE TO THE COMPLAINANTS BEFORE THE COMMISSION RELIEF WHICH WOULD BE DENIED TO THEM ON ACCOUNT OF THEIR UNCONSCIONABLE AND INEQUITABLE CONDUCT, AND IT AFFORDS THEM AN OPPORTUNITY IN THE FUTURE TO CONTINUE THEIR ILLEGAL PRACTICES OF SOLICITING AND ORTAINING UNLAWFUL REBATES FROM CONNECTING LINES. IT WOULD BE INEQUITABLE TO GRANT THEM SUCH RELIEF.

Post v. *So. Ry.*, 103 Tenn., 220; s. c., 52 S. W., 301.

XX.

THE ENGLISH STATUTES, IN FORCE PRIOR TO THE ENACTMENT OF THE INTERSTATE COMMERCE LAW, SPECIFICALLY EMPOWERED THE COURT OF COMMON PLEAS OR ONE OF THE JUDGES THEREOF, AND AFTERWARDS THE RAILWAY AND CANAL COMMISSION, TO MAKE SPECIFIC ORDERS OF AN INJUNCTIVE NATURE UPON SPECIFIC COMPLAINTS AGAINST CERTAIN CARRIERS.

Sec. 3, English Railway and Canal Traffic Act of July 10, 1854, found on page 2, 1 Nev. & MacN.

English Act of July 21, 1873, Sec. 6, found on page 6, 1 Nev. & MacN., see also, page 12; and Sec. 29.

English Act of August 10, 1888, found in 6 Railway and Canal Traffic Cases, page xviii.

XXI.

IT IS TO BE PRESUMED THAT WITH THIS LEGISLATION BEFORE IT CONGRESS, BY OMITTING TO MAKE SUCH SPECIFIC PROVISIONS, DID NOT INTEND TO VEST THE COMMISSION WITH POWER TO MAKE SUCH ORDERS.

XXII.

THE POWERS OF THE COMMISSION FOUNDED ON THIS STATUTE ARE LARGELY ADVISORY. IT IS ALSO CREATED AS AN INSTRUMENTALITY BY THE LEGISLATURE TO FIND AND STATE EVIDENCE IN SUPPORT OF COMPLAINANTS FOR DAMAGES, THUS ENABLING SHIPPERS TO READILY SUPPORT THEIR CLAIMS IN COURT.

Board of Railroad Commissioners v. *Oregon Ry. & Nav. Co.*, 19 Pac., 702, 704, 706 and 707.

People v. *N. Y. L. E. W. R. R.*, 104 N. Y., 58, 66 and 67; 9 N. E., 856.

No. Pac. R. R. v. *Dustin*, 142 U. S., 503.

State, ex rel. v. *Mo. Pac. R. R.*, 55 Kas., 708; 41 Pac., 964.

XXIII.

IN CONSTRUING STATUTES CONFERRING SPECIAL POWER OR AUTHORITY UPON A BOARD OR TRIBUNAL NOTHING IS PRESUMED WHICH IS NOT EXPRESSLY GIVEN, AND IN THE EXERCISE OF SUCH SPECIAL POWER SUCH BOARD OR TRIBUNAL IS PRECISELY LIMITED TO THAT SPECIFICALLY GRANTED.

Lewis' Sutherland on Statutory Construction (2nd Ed.), Secs. 562, 564, 565, 567, and 568.

XXIV.

IN THIS PROCEEDING THE FEDERAL COURTS HAVE NO POWER OR AUTHORITY TO MAKE ANOTHER OR DIFFERENT ORDER THAN THAT MADE BY THE COMMISSION, OR TO MODIFY THE ONE MADE.

Int. Com. Com. v. *L., & N. R. R.*, 73 Fed., 409.

Int. Com. Com. v. *D., L. & W. R. R. Co.*, 64 Fed., 723.

D. G. H. & M. R. R. v. *Int. Com. Com.*, 74 Fed., 803, 841.

Farmers' L. & T. Co. v. *N. P. R. R. Co.*, 83 Fed., 249.

Int. Com. Com. v. *West. N. Y., etc., R. R. Co.*, 82 Fed., 192.

XXV.

THE ORDER OF THE COMMISSION WAS INVALID BECAUSE THE CONNECTING CARRIERS WERE NOT MADE PARTIES TO THE PROCEEDINGS BEFORE THE COMMISSION AND THE COMMISSION HAD NO POWER TO ADJUDICATE THE PROVISION IN THE JOINT TARIFF AGREEMENT TO BE INVALID WITHOUT HAVING BEFORE IT THE CONNECTING CARRIERS WHO WERE PARTIES TO THAT AGREEMENT AND GIVING THEM AN OPPORTUNITY TO BE HEARD THEREON.

A COURT OF EQUITY COULD NOT ENTERTAIN JURISDICTION IN SUCH A CONTINGENCY, NEITHER COULD THE COMMISSION MAKE AN ADJUDICATION OR ORDER DECLARING INVALID THE JOINT TARIFF AGREEMENT AND THUS AFFECTING RIGHTS OF PARTIES WHO WERE NOT BEFORE THE COMMISSION. AND THEN SEEK TO MAKE SUCH AN ORDER FINAL AND CONCLUSIVE BY THE DECREE OF A COURT OF EQUITY. IT WOULD BE INEQUITABLE FOR THE COURT TO ENFORCE SUCH AN ORDER.

California v. *So. Pac. Co.*, 157 U. S., 229, 249, and 251.

U. S. v. *Nor. Pac. R. R.* 134 Fed., 715; (C. C. A., 8th Circuit).

Cons. Water Co. v. *City of San Diego*, 93 Fed., 849 and 852.

Western N. Y. R. R. Co. v. *Penn. Rfg. Co.*, 137 Fed., 358.

ARGUMENT.

I.

THE JURISDICTION OF THE COURT IN THIS PROCEEDING IS PREDICATED WHOLLY UPON THE LAWFULNESS OF THE ORDER OF THE COMMISSION.

The jurisdiction of the Circuit Court in this proceeding is had under Section 16 of the Interstate Commerce Law on the petition of the plaintiff to enforce a "lawful order or requirement of the commission." The lawfulness of the order of the commission is now made the subject of judicial investigation and determination.

To determine whether the order of the commission sought to be enforced by the mandatory injunction of the court be lawful or not it must be ascertained.

First. Is the order one which the commission had the power and authority under the provisions of the Interstate Commerce Law to make?

Second. Is the order *prima facie* legally authorized or justified under the "findings of fact" set forth in the report of the commission,—are such "findings" sufficient to warrant the making of the order? If not, it is evident on the face of the report that the commission have erred in applying the law to the case before them and their order should not be enforced by the courts. (*L. & N. Rld.* v. *Behlmer*, 175 U. S., 674, 675 and 676.)

Third. Is the order, in case of dispute such as

would be warranted under the facts finally ascertained to be the true facts by the court, allowing a *prima facie* effect, as evidence, to the "findings" of the commission? For if, on a trial, such facts should be shown to the court as would show that the order in question was unwarranted and not justified under any provision of this law relied upon by the commission, then the order is shown to be erroneous and invalid.

Fourth. If it appear from the report and conclusions of the commission that they have misconstrued or misapplied the provisions of this law, in coming to their determination, and upon which their order is based, then such order is erroneous and invalid.

See,

Int. Com. Com. v. *Lehigh Valley R. R.*, 74 Fed., 784.

D. G. H. & M. R. R. v. *Int. Com. Com.*, 74 Fed., 803.

Int. Com. Com. v. *D., L. & W. Rld.*, 64 Fed., 723.

East Tenn. etc., R. R. v. *Int. Com. Com.*, 181 U. S., 1.

The decision and order of the commission are based upon the following assumptions.

First. That the provisions in the joint tariff investing the initial carrier with the exclusive right to route shipments is in violation of the sixth section of the Interstate Commerce Law; that joint tariff rates make joint routes and that the shipper has the right himself under this law to select any one of such routes and ship under the joint rates, ignoring the provision

or condition of the agreement upon which joint rates are made. (This involves a construction of that section of that law, which, however, was not adopted by the lower court in its decision.)

Second. That the practice of the defendants, the initial carriers, in the application of this reserved right to route in respect to citrus traffic, "subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage *and* gives the carrier an undue and unreasonable preference and advantage." (This involves a construction of Section 3 of the Interstate Commerce Law, and the question whether the order itself is properly limited to any concrete case involved. It may also involve a consideration of the evidence as to whether such shippers are in fact subjected to an undue and unreasonable prejudice and disadvantage, as above stated. The lower court did not find such to be the facts or the law.)

Third. That it appeared "that a tonnage pool of this traffic as between the connecting carriers *not defendants* was established, and that the defendants so controlled the routing as to give specified percentages of this traffic to their several connections, thereby fulfilling and giving effect to this unlawful and forbidden arrangement." (This involves a consideration of the evidence and the findings of the commission in that respect, and possibly a construction of Section 5 of the Interstate Commerce Law. While the commission did not conclude that there was a violation of that section yet the lower court deduced from the evidence quoted in its opinion that the arrangement involved in the making of the particular joint tariff was

violative of that section, and sustained the order on that ground.)

II.

THE SUPPOSED RIGHT OF THE SHIPPERS TO ROUTE IS NEITHER RECOGNIZED NOR PROTECTED BY ANY PROVISION OF THE INTERSTATE COMMERCE LAW AND THEREFORE THE ASSERTION OF SUCH RIGHT TO ROUTE IN THE INITIAL CARRIER CONTRARY TO THE WISHES OF SHIPPERS IS NOT "SOMETHING DONE OR OMITTED TO BE DONE IN VIOLATION OF THE PROVISIONS" OF THAT LAW OR ANY OTHER LAW COGNIZABLE BY THE COMMISSION.

In its inquiries concerning complaints, and in the determination thereof, the commission is very plainly limited to the investigation of cases in which "*something has been done or omitted to be done in violation of the provisions*" *of that law,* and its orders must necessarily be confined to such cases, if any.

In section 13 of that law it is provided that any person, association, etc., "complaining of *anything done or omitted to be done by any common carrier, subject* to the provisions of this act, *in contravention of the provisions thereof,* may apply to said commission by petition, which shall briefly state the facts, etc." Notice of such complaint is then to be given by the commission to the carrier and if the complaint be not satisfied and there appears to be reasonable ground for investigating such complaint, it is then made the duty of the commission to investigate the matter complained of.

In section 14 it is provided that when an investigation shall be made by the commission,

"it shall be its duty to make a report in writing in respect thereto, which shall include the *findings of fact* upon which the *conclusions* of the commissions *are based*, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found *to have been injured;* and *such findings* so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found."

In section 15 it is provided that:—

"If in any case in which an investigation shall be made by said commission it shall be made to appear to the satisfaction of the commission, either *by the testimony of witnesses or other evidence*, that anything *has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said commission*, by any common carrier, or that any injury or damage *has been sustained by the party or parties* complaining, or by other parties aggrieved in consequence of any *such violation*, it shall be the duty of the commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a *notice* to said common carrier to *cease and desist from such violation*, or to make reparation for the injury so found *to have been done*, or both, within a reasonable time, to be specified by the commission; and if, within the time specified, it shall be made to appear to the commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the commission, or to the satisfaction of the party coplaining, a statement to that effect shall be entered of record by the commission, and *the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.*"

If the commission has the power to make any or-

der or requirement in the premises, clearly such order or requirement should be confined to prohibiting *something done or omitted to be done in violation of the provisions of this law by the carrier.* The power of the commission in respect to its determinations or recommendations is defined by this section.

The commission could not entertain a complaint against a carrier for damages arising out of its failure or refusal to route a particular shipment as requested by the shipper, as such matter is not provided for in this law. Neither can it, then, in the first instance, by an order, prohibit the carrier from exercising the reserved right in the joint tariffs to route, or from carrying out the provisions of such tariffs in respect thereto. It was held, under the English statute somewhat similar to ours that complaints thereunder must be confined to violations of such statute.

In *Wannan* v. *Scottish Central Railway Company*, 1 Nev. & MacN. (Railway and Canal Traffic Cases), 237; s. c., 2 Sess. Ca., 1373, 3rd ser., averments that a railway company refused to give effect to general orders left with it to deliver goods arriving at its stations by a particular carrier, and that the company refused to hand over goods for delivery by a particular carrier in whose care they were addressed: Held, no relevant allegations of a contravention of the undue preference clause and, therefore, not sufficient to warrant the summary procedure provided for in the act. Lord Justice Clerk, Inglis, said:

"I do not think that the question here raised by the petitioner admits of any doubts, and I have, without the slightest difficulty, arrived at the conclusion that we ought to dismiss his application. The petition is

competent only under the Railway Traffic Act, and if it is not a relevant and good complaint of *something done or omitted to be done by the railway company in contravention of that act, then it is not a competent petition.*"

On pages 241 and 242 he continues:

"Then, with regard to the other branch of the petitioner's case. It is this, that the Scottish Central Railway Company, in the prosecution of malicious feelings against their old servant, the petitioner, refused to deliver to him goods specially consigned for delivery to him, and delivered them to someone else. Now there can be no doubt that this is a relevant ground for action, but it is not a relevant ground of complaint under this act; because if a company receive goods from a consignor to be delivered to a certain consignee, and decline to fulfil that contract, that is a simple breach of contract of the common carriage, and not a case under the Railway Traffic Act."

See, also,

Bennett v. *Manchester, Sheffield and Lincolnshire Ry. Co.*, 1 Railway and Canal Traffic Cases, 288; s. c., 6 C. B. (N. S.), 707.

Is, then, the enforcement by the initial carriers of the provision in the joint tariffs, giving them the exclusive right to route, *something "done or omitted to be done in violation"* of that law? It will not be pretended that the Interstate Commerce Law recognizes or seeks to protect any supposed right of a shipper to route his shipment. No provision of that law can be pointed to which prohibits the carriers from routing or from bargaining for the privilege. The commission, however, argues that this joint tariff provision is in violation of section 6; that the voluntary making of joint through rates is the establishment of continuous lines over which such rates apply, and that the

rates cannot be increased or decreased, except upon a certain number of days' notice, although it must be admitted that if the joint tariff agreement has no fixed period, any party thereto may withdraw therefrom or cancel the same at pleasure at any time. In this case there has been no attempt to charge any shipper a greater rate than that specified in the tariffs wherever the shipment is made under or in pursuance of the provisions of the joint tariff agreement. Where shipped under other or local tariffs, the rates therein apply. The shipper is at liberty to ship under the joint tariffs and the rates therein prescribed, or not, as he may please,—it is always optional with him to do so. It is simply insisted that where he does make a through shipment under a joint rate, which is lower than the sum of the locals, he ship and accept such lower rate upon the condition on which it is made by the agreement of the carriers and thus offered him.

If he does not like this condition he is not obliged to accept the same, but may ship at the sum of the locals, and the routes or lines are just as continuous for shipment or carriage in the one case as in the other.

The joint rate is the through rate where the initial carrier routes, and the sum of the locals is also a through rate where the shipper routes. A through rate may be the one thing or the other—a joint rate fixed by agreement of connecting carriers, or the sum of the locals.

See,

Opinion of Lord Esher, in *Didcot, &c. Ry. Co.* v. *Great Western, &c. Ry. Co.*, 10 Ry. & Canal Traffic Cas., 5; also,

Opinion of Rigby, L. J., in same case, pp. 7 and 8.

Carriers may lawfully impose one rate for goods shipped at "Carrier's risk," and a lower rate for the same kind when shipped at "Owner's risk."

Mannheim Ins. Co. v. *Erie W. Trans. Co.*, 75 N. W., 602.

So, in case of routing, the through rate is ascertained or determined according to the conditions under which the shipment is made just as in cases where it moves under bills of lading releasing the carriers from certain risks or where it moves at "carrier's risk." The tariff rates are not departed from but adhered to, and a shipper is charged no more than the rates specified in the tariffs applicable to such shipment. In this the 6th section is followed, not violated.

The Interstate Commerce Law does not require or enforce the making of joint tariffs, but, on the contrary, recognizes that they are, as at common law, solely a mater of private arrangement or agreement between the connecting carriers.

In section 6 it is provided:

"Every such common carrier shall also file with said commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight may pass over continuous lines or routes operated by more than one common carrier, *and* the several common carriers operating such lines or routes establish joint tariffs or rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said commission. Such joint rates, fares and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said commission, insofar as may, in the

judgment of the commission be deemed practicable; and said commission shall, from time to time, prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published."

This provision recognizes that there may be continuous lines or routes over which freight passes and there may or may not be joint tariffs in respect to the same, and provision is simply made in case joint tariffs are made for the filing and publication of the same.

Further on it is provided, in the same section:

"The commission may determine and *prescribe the form* in which the *schedules* required by this section to be kept open to public inspection shall be *prepared and arranged* and may change the *form* from time to time as shall be found expedient."

Provision is also made forbidding advances or reductions in the joint rates, except after a certain number of days' notice to the commission, though there is nothing to prohibit the carriers from cancelling the same at pleasure. It is also made unlawful for the carrier to deviate from the tariff while in force.

This section deals only with *rates and charges between points of shipment.* It does not concern the selection of routes between those points. *The joint tariffs themselves only concern and set forth rates applicable between points of origin and destination.*

The routes are not designated therein. Only the companies parties to the rates are mentioned. *All that the shipper is entitled to is the rate prescribed therein if he ship under the tariffs.*

The power of the commission in respect to such joint tariffs is here very clearly defined. It has no power to prescribe what shall or shall not be contained in the joint agreements, nor what the provisions thereof shall be. It is therefore, well stated in *Interstate Commerce Commission* v. *Railway Company*, 167 U. S., 504, 505, as follows:

"Not only are there these provisions in reference to the tariff upon its own line, but further when two carriers shall unite in a joint tariff (and such union is nowhere made obligatory, but is simply permissive), the requirement is *only* that such joint tariff shall be filed with the commission, and *nothing but the kind and extent of the publication thereof is left to the discretion of the commission.*"

On page 506 it is further said:

"The grant to the commission of the power to prescribe the form of the schedules and to direct the place and manner of publication of joint rates, *thus specifying the scope and limit of its function in this respect*, strengthens the conclusion that the power to prescribe rates or fix any tariff for the future is not among the powers granted to the commission."

In other words, by specifically expressing the power of the commission over joint tariffs in certain particulars, Congress necessarily intended to exclude any power over such agreements, and the parties thereto, in other respects. *Expressio unius est exclusio alterius.*

There is a marked difference between this law which intentionally omitted giving the commission power to make provisions concerning joint tariff rates, and the Minnesota statute which invested the Railroad Commission of that state with specific power over such tariffs, and which was considered by this court in *Minne-*

apolis, &c. Ry. v. *Minnesota*, 186 U. S., 257. That case was relied on by the other side in the lower court.

Joint tariffs do not make continuous lines or routes under the provisions of this law, for lines or routes are, as they always were, continuous if traffic may pass over the same whether there be any joint rates or not in force over them. Continuous lines were recognized and specifically mentioned in Sec. 5257 Revised Statutes, U. S., enacted in 1866, without any reference to joint tariffs. *The carriers are at liberty now, as they were before this act, to make joint rates in respect to some commodities or kinds of traffic and decline to make joint rates in respect to others, in which latter case the sum of the locals would apply. In respect to some they may not be able to agree as to the rate or the division thereof.* It is altogether a matter of voluntary agreement. Being a matter of voluntary agreement, it is evident that the commission cannot make one for the parties different from that which they desire to make or be bound by. Yet this is just what he commission attempted to do.

That it is purely a matter of private arrangement or agreement between the carriers themselves is not only apparent from the foregoing provision, but it has been frequently so decided. With the exception of requiring such joint agreements and tariffs to be filed and published, if the commission shall so require, the law leaves the carriers as free as they were at common law to determine the terms and conditions of such joint contracts or arrangements. That was the view taken by the late and distinguished Mr. Justice Jackson in the case of *Kentucky & I. Bridge Company* v. *L. & N. Ry. Co.*, 37 Fed., in his opinion on pages

629 and 630. See, also, page 633. On page 630 he quotes with approval from a report of the commission, as follows:

"'If companies can agree upon their tariffs, the form of their tickets, and how they shall be sold, they have the right to do so, and by such agreement become interstate carriers; but if they cannot agree, the act does not undertake to coerce them to do business together upon terms that may be justly objectionable or injurious.'"

He then continues:

"It will hardly be insisted that a different rule applies in respect to through freight traffic, *and joint through rates or charges, the arrangement for which,* as well as the forms of the bills of lading and the apportionment to be made of such joint tariff rates, and of losses or damage to freights in course of transit, *are all matters of private agreement.* Such arrangements, which usually include the reciprocal interchange of cars, and the use of each other's tracks and terminal facilities, are prompted by considerations varied and complex, as shown in the above statement of facts."

In Elliott on Railroads, Vol. 4, Sec. 1685, it is stated, referring to this law:

"It is, perhaps, safe to say that, subject to the prohibitions against unjust or unreasonable charges and against unjust discrimination, railroad companies are free to make contracts respecting the interchange of freight."

See, also,

Little Rock, etc. R. Co. v. *St. Louis, etc. R'y Co., et al.*, 41 Fed., 559.

Little Rock & M. R. Co. v. *St. Louis, I. M. S. Ry. Co.*, 59 Fed., 400; s. c., in C. C. A., 63 Fed., 775.

Oregon Short Line, etc. Ry. Co. v. *Northern*

Pacific Ry. Co., 51 Fed., 465; affirmed in C. C. A., in 61 Fed., 158.

St. Louis Drayage Co. v. *L. & N. Ry. Co.*, 65 Fed., 39.

Prescott, etc. Rly. Co. v. *A., T. & S. F. Ry. Co.*, 73 Fed., 438.

G. C. & S. F. Ry. Co. v. *Miami S. S. Co.*, 86 Fed., 407.

L. & N. Rly Co v *West Coast, etc Co.*, 198 U. S., 497, 498.

The court cannot make an arrangement or compel the making of contracts for the business intercourse of common carriers.

Pullman Car. Co. v. *Mo. Pac. Ry. Co.*, 115 U. S., 587.

Express Cases, 117 U. S., 1.

A., T. & S. F. Ry. Co. v. *D. & N. O. R. Co.*, 110 U. S., 682, 683.

In *Express Cases*, 117 U. S., on page 29, it is said:

"In this way, as it seems to us, 'the court has made an arrangement for the business intercourse of these companies, such as in its opinion, they ought to have made for themselves,' and that we said in *Atchison, Topeka and Santa Fe Railroad Co.* v. *Denver & New Orleans R. R. Co.*, 110 U. S., 673, followed at this term in *Pullman's Palace Car Co.* v. *Missouri Pacific Rly. Co.*, 115 U. S., 587, could not be done. The regulation of matters of this kind is legislative in its character, not judicial."

L. R. & M. Rld. Co. v. *St. L., I. M. & S. Rly. Co.*, 41 Fed., 559.

Southern Pacific Co v. *Colo. Fuel & Iron Co.*, 101 Fed., 779 and 786.

The commission has not the legislative power of prescribing any particular arrangements between connecting carriers. They cannot do, therefore, indirectly what it must be conceded they cannot do directly.

In *Little Rock, etc. R. Co.* v. *St. Louis, etc. Ry. Co.*, 63 Fed., 779, it is said:

"It is urged, however, in substance that although the court may be powerless to make and enforce agreements between carriers for through billing and through rating, and for the use of each other's cars, tracks and terminal facilities, yet that when a carrier of its own volition enters into an agreement of that nature with another connecting carrier the law commands it to extend 'equal facilities' to all other connecting carriers if the physical connection is made at or about the same place and the physical facilities for an interchange of traffic are the same, and that this latter duty the courts may and should enforce. *It will be observed that the proposition contended for, if sound, will enable the courts to do indirectly what it is conceded they cannot do directly.*"

After stating that the doctrine contended for would destroy the right of carriers to determine for themselves what contracts and traffic arrangements with connecting carriers are desirable and what are undesirable, the court says, on page 780:

"There ought to be a clear authority found in the statute for depriving the carrier of this important right before the authority is exercised, for when questions of that nature have to be solved, a great variety of complex considerations will present themselves, some of which can neither be foreseen nor stated."

Therefore, the Supreme Court in *Cin., N. O. & T. P. Ry. Co.* v. *Int. Com. Com.*, 162 U. S., on page 197, adopted and quoted with approval the view of the

late Justice Jackson in the case of *Int. Com. Com.* v. *B. & O. R. R. Co.*, 43 Fed., 37, as follows:

"Subject to the two leading prohibitions that their charges shall not be unjust and unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage or subject to undue preference or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law, free to make special contracts looking to the increase of the business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are recognized as sound, and adopted in other trades and pursuits."

See, also,

Int. Com. Com. v. *Alabama Midland Ry. Co.*, 74 Fed., 723 and 724.

Int. Com. Com. v. *Western & A. R. Co.*, 93 Fed., 91.

Int. Com. Com. v. *Western & A. R. Co.*, 88 Fed., 196.

In *Nicholson, et al.* v. *Great Western Ry. Co.*, 7 C. B. (N. S.), 755; s. c., 1 Nev. & MacN. (Railway and Canal Traffic Cases), on page 149, Erle, C. J., said, with reference to the English statute:

"*I take the free power of making contracts to be essential for making commercial profit. Railway companies have that power as free as any merchants, subject only (as to this court) to the duty of acting impartially, without respect of persons;* and *this duty is performed when the offer of the contract is made to all who wish to adopt it.* Large contracts may be beyond the means of small capitalists; contracts for long distances may be beyond the needs of those whose traffic is confined to a home district; but the power of the railway company to contract is not restricted by these considerations."

To say that the carriers may not determine or prescribe the terms or conditions upon which their voluntary agreement for joint through rates shall become effective is simply to deny them the right to make an agreement upon the subject.

The routing provision in the joint tariffs is in express terms made the very condition or consideration upon whihc the initial carrier enters into the agreement fixing the joint rate. If that consideration or condition be held illegal, then, would not the entire agreement be invalid? The consideration for the joint rate is taken away. Neither court nor commission could enforce one part and reject the other or take away the consideration without making a new contract which the parties thereto do not want and would not make for themselves.

But being unable to point out any specific language, or clause in the Interstate Commerce Law which condemns the routing provision in question, the commission, in their anxiety to discover reasons, argue that the practice may result in an "unjust discrimination."

The commission state in their conclusions:

"It is not a sufficient excuse for the practice under discussion to say that the first carrier's control of the routing beyond its rails must be so exercised as not to unduly discriminate. The granting of a given routing to one and denial of the same to another is itself an *unjust discrimination.*"

This sentence demonstrates the little attention given by the commission to construing the language of the law which they are called upon to administer. It shows a lack of discrimination in reading that statute. What shall constitute an "*unjust discrimination*"

is very clearly defined in section 2 of that law. A case of "unjust discrimination" arises only under section 2, if a carrier—

"Shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons, a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property * * * than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of *unjust discrimination*," etc.

The section only refers to discrimination in *charges* as between different shippers for like services in the transportation of a like kind of traffic *under substantially similar circumstances and conditions;* but all shippers who ship under substantially similar circumstances and conditions, that is all shippers who ship under and by virtue of the provisions of the joint tariff, are charged the same rate. In that event the carrier does the routing. Where shipments are made under other circumstances, as where the shipper insists on the privilege of routing, the locals applicable thereto are charged, the charges being the same in respect to all shipments under such conditions and circumstances.

No case of unjust discrimination has yet been presented either to the commission or to the court, and the commission cannot assume to decide such a case until it arises and is presented in due form. It cannot determine such a case until it is put in possession of the facts of such particular case and of the circumstances

and conditions attending the respective shipments in which it is claimed that an unjust discrimination was practiced in favor of one shipper as against another in respect to charges for transportation.

But the order in question is not even confined to meeting the fears of the commission or to cases which might come within the scope of such fears. Even if the granting of a given routing to one and denial of it to another in any given case might be held to constitute an unjust discrimination, it is obvious that the order of the commission is too broad to cover such a hypothetical case. If it were unlawful to do that in any case, would not the proper order, if any order could be made, be to prohibit the carrier from routing in any instance as requested by any shipper under such joint tariffs? How can it be assumed that the carrier will unjustifiably favor one shipper at the expense of another under similar circumstances?

The commission do not pretend to find anywhere that there existed a case of undue preference or unjust prejudice as between shippers by reason of anything done or omitted to be done by the carriers. The contention of the commission, however, in this respect, is not sound. The tariff provision in question is that the initial carrier shall in all case itself exercise the right to route.

If however, it be contended that the voluntary making of joint tariffs or through rates has the effect of creating continuous through lines or routes, then it would simply follow that the through lines or routes so made are the lines or routes of each and all of the carriers making the agreement. Therefore, if the initial

carrier by contract establishes joint through rates over several connecting lines, so as to apply to shipments between the same points the connecting lines are thereby made, for the purpose of the rates, the routes or lines of the initial carrier, and the case is then identical with that in which an initial carrier should itself operate two or more lines between the same points. In such case it would, undoubtedly, have the right to determine over what lines thus controlled by it the shipment should go. It might, of course, in a particular case, be held liable in case of damage if it selected a dangerous or unsafe route when a safe route was open at the time, but this would be upon the ground of negligence. That was the case of *Express Co.* v. *Kountze*, 8 Wall., 343, cited by the commission. In that case the express company employed two different routes in its business, the southern route at the time was the more expeditious, but it was dangerous. The northern route, while longer, was safer. The express company sent the gold dust in question over the dangerous route, where it was seized by rebels. As this danger was known to the express company, and such loss might have been anticipated, it was properly held liable for negligence.

III.

AT COMMON LAW THE QUESTION OF ROUTING WAS PURELY A MATTER OF ARRANGEMENT OR AGREEMENT, AND IT IS NOT AFFECTED IN ANY RESPECT BY THE INTERSTATE COMMERCE LAW.

At common law the question of routing was always regarded merely as a private arrangement between

shipper and carrier. If the carrier accepted the goods under specific directions from the shipper as to their delivery, the carrier impliedly in such case undertook to deliver according to directions. That was the ruling in *Streator* v. *Horlick*, 1 Bing., 34, the earliest case on the subject, in which it appeared that the carrier *assented to* the order of the shipper as given and was, therefore, held liable for failure to comply therewith.

In *Hastings* v. *Pepper*, 11 Pick., on p. 43, it was said by Chief Justice Shaw:

"As the carriage is *a matter of contract*, as the owner has a right to judge for himself what position is best adapted to carrying goods of this description with safety and to direct how they shall be carried, and as the carrier has the right to *fix his own rate for the carriage or refuse altogether to take the goods with such directions*, the court are all of opinion that if a carrier *accepts goods for carriage thus marked* he is bound to carry the goods in the manner and position required by the notice."

So much, indeed, is it regarded as a matter merely of contract that it is held where the bill of lading does not specify the route, the carrier has the right to select any route it deems proper, and oral evidence is inadmissible to show specific directions as to the routing given by the shipper. This demonstrates that it is purely a matter of private arrangement or agreement between the parties.

See,

Snow v. *I. B. & W. R. Co.*, 109 Ind., 422, 425; s. c., 9 N. E., 702, 703.

C. I. & L. R. Co. v. *Woodward*, 72 N. E., 558 (Supreme Court of Indiana, 1904).

White v. *Ashton*, 51 N. Y., 280, 284.

Hinckley v. *N. Y. C. & H. R. Co.*, 56 N. Y., 429, 433, 434.
Ind. R. R. v *Remy*, 13 Ind, 518.
Patten v. *U. P. R. R.*, 29 Fed., 591.
Post v. *Southern Ry. Co.* 52 S. W., 301; s. c., 103 Tenn., 220.

In *Lowe* v. *Seaboard Air Line Ry Co.* (S. C.), 41 S. E., 297, a statute of South Carolina restricting the rights of the carrier to ship or transport by the route which the carrier may choose and placing the control of the route wholly in the hands of the shipper, was held to be "an unlawful restriction on the freedom of interstate commerce," and to be invalid and void.

It was, therefore, held in view of the decisions under the Interstate Commerce Law, in *Post, et al.* v. *Southern Ry. Co.*, 103 Tenn., 220; s. c., 52 S. W., 301, that where goods are tendered for shipment to a point beyond the initial carrier's line and there are several routes equally safe and cheap, the carrier cannot be compelled to accept the goods to be carried over one route in preference to another at the shipper's option. That decision was not based, as supposed by the commission, upon the ground that through bills of lading rendered the initial carrier liable for loss or damage upon the connecting line, and for such reason it should have the right to select the route, but it was upon the ground that as the initial carrier was not obliged to carry beyond its own line, if it nevertheless undertook to go beyond said line it might impose as a condition for such undertaking the right to select the route for so doing. In other words, undertaking to do what it was not obliged to do under the law, such undertaking afforded a sufficient consideration to the ship-

per whereby the carrier was given the right to route, that being the condition upon which the carrier assumed an obligation which could not be imposed upon it under the law.

The same reasoning applies in respect to joint through rates. The initial carrier not being obliged under the law to make through rates, it may, for the same reason, impose upon the shipper this condition, as the carrier thus affords to the shipper a sufficient consideration for a waiver of the supposed right, if any, to route.

If, then, as is admitted, the initial carrier may refuse to enter into or make with connecting carriers by agreement joint through rates applicable to through shipments, certainly, if it chooses to do so, it may impose as the condition of its so doing, or for the offering of such joint rates to shippers, such a reasonable condition as the privilege of itself selecting the route (even if the shipper otherwise had the right), the shipper being protected in the through joint charge or rate. It only remains for the shipper to determine whether to accept the rate with the condition attached, or not. If he deems the condition too burdensome or the privilege of routing so valuable to him, he may exercise his claimed right by shipping under the local rates. He is not obliged to ship under the joint tariffs,

After all, the tariffs, whether joint or not, are simply offers of contracts on the part of the carrier to shippers to transport at the rates and on the conditions named, the joint tariffs of course involving the agreements between the carriers themselves fixing the joint

rates and the conditions applicable, which, of course, cannot be varied except by consent of the parties thereto. Chu v. Texas & Pac. Ry. Co. 194 U.S. 317

As the carrier is not obliged to carry beyond its own line, so it is not obliged to make rates beyond it. If, therefore, in the one case it may refuse to carry beyond its own line, except upon exercising the privilege of routing, it necessarily follows, also, that in the other case it may refuse to make a joint through rate good beyond its own line, except upon the condition also of exercising the same privilege of routing. The reasoning in each case must be identical.

Therefore, in *Galveston, H. & S. Ry. Co.* v. *Short,* 25 S. W., 142, it was held that a carrier may limit its liability to its own line in a contract for a through shipment to a point on another carrier's line and that while it thus makes a through shipment under a special contract for a reduced rate of freight, it is not liable for an injury to the shipment on a connecting line though it did not choose the through route which the shipper preferred. In the opinion it is said:

"The through shipment was made under a special agreement for a reduced rate of freight, and we are not prepared to hold that appellant, in consideration of this reduced rate, did not have the right to choose its connecting lines for the shipment. Appellee could have shipped to New Orleans, and there chosen his own route; but he was given a reduced through rate, and we cannot see that the liability of appellant is affected by the through route it chose. It doubtless chose the one with which it had arrangements for a through rate."

Indeed, the question whether the initial carrier may be held liable for the negligence of a connecting carrier will depend largely upon the facts concerning the

particular shipment and the rulings of the particular court in which the action may be brought. Some courts pay little heed to the limitations contained in the bills of lading, but are rather willing to deduce a contract for through shipment from the fact that the destination marked is upon a connecting line and a through rate is made by the initial carrier.

Thus, in *Railroad Company* v. *Pratt,* 22 Wal., 132, it is said:

"The jury were justified in inferring that where a carrier fixes a price for transportation over the whole route, that he makes the entire contract his own."

The commission was not justified, therefore, in assuming, because the usual forms of bills of lading issued by the initial carrier attempted to limit its liability to its own line, that therefore it could not or would not be held liable in any contingency for damage occurring upon some other line.

As it could not be asserted beyond peradventure that such liability might not attach it would evidently be unsafe to predicate a decision based upon the assumption that the initial carrier could not and would not under any circumstances be held liable in such a contingency.

In any event a refusal by the carrier to route as requested by a shipper is not a violation of any provision of the Interstate Commerce Law.

IV.

ANY INTERFERENCE WITH THE SUPPOSED RIGHT OF A SHIPPER TO DIVERT HIS SHIPMENT WHILE IN TRANSIT WOULD NOT BE IN VIOLATION OF THE INTERSTATE COMMERCE LAW. DIVERSION OF THIS TRAFFIC, AS PRACTICED BY THE SHIPPERS IS MERELY A PRIVILEGE OR CONCESSION GRANTED BY THE CARRIERS, BUT TO WHICH THE SHIPPER IS NOT ENTITLED AS A MATTER OF RIGHT.

Much space is devoted in the report of the commission to a consideration of the supposed right of the shippers of this traffic to divert it to a new destination while in transit from the original point of shipment. Among other things, it is said by the commission:

"Another deprivation of right generally supposed to be vested in the shipper is found in these cases in the inability of the shipper to divert his freight in *transitu* to a point where the market conditions become favorable after transportation of the shipment commences."

It is difficult to understand why such a subject should be brought into the report or considered by the commission, since the commission nowhere point out in the statute a right in shippers to divert freight while in transit and to require transportation under the original through rate to a new point of destination. The commission, as shown by the dissenting opinion of Commissioner Knapp, was also in error in respect to this supposed right.

It may be true that at common law the shipper, if also the consignee or the owner of the freight, may, upon surrender of the bill of lading, which is an *indicium* of title, and upon indemnifying the carrier against

possible liability, demand a surrender of his freight at any point upon paying, however, to the carrier the full charge or rate to the original destination designated in such bill of lading. When carriers receive freight marked for delivery at a given destination a contract for transportation is then made which cannot be broken by either party, except upon paying damages to the other for the breach; and in case the shipper prevents the carriers from completing the contract by demanding delivery at an intermediate point, the damage resulting to the carriers in being prevented from fully performing are the full charges for transportation which the shipper is obliged to pay before he is entitled to the custody of his goods.

Ellis v. *Willard,* 9 N. Y., 529.
Violett v. *Stettinius,* 5 Cranch. (C. C.), 559, or 28 Fed. Cas., No. 16,953.
Braithwaite v. *Power,* 48 N. W., 354.
Hutchinson on Carriers (2nd Ed.), Sec. 444-a.

The shipper evidently has no right to demand that the freight be diverted while in transit and be transported to a new destination without paying the original freight charges and making a new contract for transportation from the point of diversion to the changed destination. Yet, in regard to this traffic, the carriers permit, as a matter of grace, the shippers thereof to divert the same and send it to a new destination without any other charge than the original freight rate.

In *Pinnix* v. *The C. & S. R. R. Co.,* 66 N. C., 34, on page 41, it is said:

"A shipper has no right to have the goods delivered to him at an intermediate station where the bulk is not broken, except by the assent of the company; even

should he offer to pay the freight through to the point of destination; for it is not in the contract. We are inclined to think, however, that at a station like Charlotte, where the bulk is broken, that is, where the goods are unloaded and transferred to another car or to the warehouse, the shipper may, upon tendering the full freight, and indemnity against the consignee, require that the goods be delivered to him there, and not be carried further, on the principle that having the goods carried is for his benefit alone, and he may dispense with a part of that stipulation in the contract, the freight being all that concerns the company."

The practice of diversion by shippers of this citrus fruit traffic as enjoyed by them is, however, as stated, purely a matter of privilege or concession granted by the carriers and is not a matter of right residing in the shipper. The privilege of diversion is still granted by the carriers. The privilege is only claimed to be of importance to the shipper where a carload goes forward without any genuine or real destination. With such carloads the shipper is desirous of being able to test and reach several different markets. In such cases the shippers give a fictitious and not a real destination. Such cars are called by them "Tramp Cars," as shippers do not know at the time of shipment where they may desire final delivery to be made. The carriers hold these cars for the shippers at different points, sending them from one place to another, and in the end charging only the rate which would obtain between the initial point and the point of final delivery. No charge is made for freight which might have been earned under the different contracts for transportation arising from the different diversions made. The diversions are accomplished by the initial carriers at great expense to themselves, and

practically none to the shippers. By reason of these diversions the earnings or divisions of the through rate which the initial carriers receive are necessarily greatly reduced, as the joint through rate is divided with the other lines. These are all concessions to, not rights of, the shippers. What legal right has a shipper to make the cars of the carrier "tramp cars?" Indeed, he has no right of control over the cars. He has no right to demand that the car furnished by the initial line shall go beyond that line. Certainly the shippers would not care to insist upon the right of stoppage to which they may be entitled if the carriers also insisted upon their legal demands arising out of these diversions.

But, after all, what provision of the Interstate Commerce Law was shown to have been violated?

V.

REASONS WHY THE INITIAL CARRIERS SHOULD HAVE THE RIGHT TO ROUTE UNDER JOINT TARIFFS OR JOINT THROUGH RATES

Many reasons might be given why the initial carriers should have this right as the consideration for making or offering joint through rates, which are lower than the locals. Under all the circumstances, as disclosed by the evidence in this case, the routing provision is reasonable and fair. Many of the reasons are set forth in the opinion of the court in the case of *Post et al.* v. *Southern Railway Company*, 103 Tenn., 220; s. c., 52 S. W., 301.

The arrangement giving the initial carrier the right

to route as a condition of making joint rates lower than the sum of the locals is not detrimental to shippers, for by this means joint rates to all places are made possible. The initial carrier could well refuse to make joint rates with but a few connecting carriers and shut out all others from the business, and facilities for distribution over a large territory would thus be lessened. By making this joint rate with all connecting carriers the shipper is guaranteed a low joint rate no matter where he may desire his shipment to go. The routing by the initial carrier facilitates distribution.

These initial carriers furnish to the shippers for through transportation the refrigerator cars, being a character of equipment not owned or controlled by the connecting lines. The connecting lines do not furnish such equipment for this traffic. They have not such equipment of their own. The initial carrier is not obliged at all to permit its equipment to go beyond its own line, and it might compel the shipper to accept delivery at the end of its road and secure cars from the connecting lines in which to load and transport further. The initial carrier is, therefore, vitally interested in seeing that this equipment which is furnished by it, and which is so necessary in this business, should be expeditiously returned to it by the connecting lines. It should, accordingly, be in a position to determine what connecting lines will give efficient service and quick return to its equipment. As this equipment is limited in respect to the kind of traffic which can be loaded and carried therein, the initial lines are generally obliged to haul these cars empty westward in order to be reloaded. It is im-

portant, therefore, that they should be in a position to determine what connecting lines will secure freight for these cars for the westward haul. It should also be in a position to determine what lines will at the time, and from time to time, be able to return such cars without any unnecessary delay. It is to the interest of the public, as well as of the carriers, that the initial carrier should not be obliged to haul more empty cars than necessary. The initial carrier at all times is in a better position than the shipper to ascertain and determine what connecting line can at the time give expeditious service, and what lines, by reason of temporary congestion, cannot. Its interest in having expeditious service and quick return of the cars is greater than that of the shipper.

Again, as it is frequently difficult to determine where damage to this character of freight may have occurred (in other words, where the damage is what is known as "concealed loss"), the initial carriers are always called upon to settle and adjust claims for such damages. As a matter of policy, and in order to keep on good terms with the shippers, the initial carriers are required to use their utmost efforts to adjust these claims. They are frequently required to participate with other companies in the settlement thereof. It is important, therefore, that they should be in a position to demand of connecting carriers early and prompt adjustments of meritorious claims. This cannot be done if they cannot exercise some control over connecting lines with respect to the routing of shipments or the exchange of business.

VI.

ON THE ALLEGED POOLING OF CITRUS FRUIT TRAFFIC BETWEEN THE CONNECTING CARRIERS.

The decision of the lower court is based solely upon the proposition that the arrangement upon which the joint tariff rates were based, and which give the initial carrier the right to specify the route over connecting lines, gives such initial carrier the right to divide that business between lines which are competitive, where the shipment might pass over one of any two or more connecting lines which might also be competitive and over which it might be routed to reach destination.

The court quotes at large from the testimony of the traffic officials of the intial carrier to show that they insisted, as a condition of making a joint rate with each connecting carrier, that the initial carrier should have the privilege of selecting the ultimate route, and that this was done for the purpose of putting an end to the abuses which had theretofore existed of connecting carriers secretly cutting the joint rate, to the detriment of the initial carriers, and the court seemed to think that this put an end to competition between connecting carriers and that this was in violation of section 5 of the Interstate Commerce Law.

The court seemed to forget that the evidence clearly showed that the initial carrier determined *for itself* what amount of freight should be routed over each connecting line, and the connecting carriers did not know what proportion they would get or were getting,

so that there was no arrangement or agreement between connecting carriers which were competitive, as to any alleged division of this traffic.

The proof showed that the initial carriers insisted on the routing provision for their own protection and the connecting lines were forced to acquiesce in this provision if they wished to participate with the initial line in the joint rate. Therefore the assumption or conclusion that an agreement for this provision was made between or at the instance of the connecting lines, which were competitors, was not only far fetched, but unnatural and contrary to the evidence. If it had been shown (which, however, was not) that there was a collateral agreement between any competing connecting carriers to divide between themselves this traffic should not that specific agreement alone be enjoined. That, however, would not justify an order forbidding the initial carriers from ever exercising the right to route even under subsequent arrangements for subsequent joint tariffs.

Some confusion of thought no doubt arises from the fact that the joint rates agreed upon between the initial carrier and each of the connecting carriers is embodied in a single tariff or document. This tariff or document is a memorandum or evidence of a vast number of agreements between the initial carrier and the connecting lines. The joint tariff is filed by the initial carrier and published at stations on its line at which freight is received which is expected to be moved over its lines under the joint rate to points beyond. It evidences the offer of the initial line to the shipping public at the points of origin of

a guaranty by such initial line of rates to final destination on connecting lines, at places mentioned in the tariff, the tariff simply designating the places between which the rates apply, and the carriers which have acquiesced in those rates. Now, if the initial carrier were required to make a separate tariff sheet for each possible through line over which it proposed to make the joint rates applicable, it will be readily seen that as there are nearly two hundred carriers designated in this tariff, that there might be a possible combination of a thousand or more lines made, and instead of publishing a general and single tariff showing rates between places, the carrier would have to publish a thousand or more different tariffs. That would not only be confusing to the public but unjustifiably expensive and onerous upon the initial carrier.

The commission itself was of course aware of this method of preparing and publishing joint tariffs and had prescribed no different method, but had acquiesced in the said method because it evidently understood that it would be impracticable to do otherwise, and any different course would be of no benefit to shippers. Tariff rates at best are quite complicated, and no good reason exists for making them more so.

But the initial line was justified in insisting that competition of other lines with itself should be controlled within legitimate bounds or by legitimate methods. It must be remembered that the Santa Fe lines extended from Southern California to Chicago; that upon this traffic there was a flat rate of $1.25 per hundred pounds from Southern California points to all points on and east of the Missouri river. The

connecting lines tapped the Santa Fe at various points west of Chicago and diverted traffic from it at such points. Where this traffic was diverted at such points the Santa Fe line was called upon to divide this flat rate with such other lines, if that joint rate was to be maintained. It would thus loose the long haul over its own line to which it was legitimately entitled.

By refusing to make a joint rate with other lines it could keep the traffic upon its own line to its terminus. To encourage the distribution of this traffic, however, it sacrificed the charges which it might insist upon, and by making a joint rate agreed to accept only a proportion of the flat rate, permitting connecting carriers to participate in a joint rate which was no greater than the rate to its own terminus. The shippers of this traffic in Southern California were therefore benefited by the arrangements made by the initial carrier with every other connecting carrier in the United States for a through joint rate of $1.25 per hundred pounds.

It is quite evident that the connecting lines were in no position to compete openly with the initial line, for they could not possibly by any arrangement make a lower rate than that which the initial line was willing to make as a joint rate for the whole distance. It is difficult to understand, therefore, how the shippers could claim they would be benefited by any open competition of connecting lines.

Neither the joint tariff nor any arrangement testified to, forbids any connecting carrier from at any moment withdrawing its consent to the joint rate and

making any rate it pleases over its own lines or competing to its heart's content with any other line.

If the joint tariff should be held invalid because some of the parties thereto happen to operate some lines which are in some respects and in some territories competitive, then the joint rate is also invalid. On the contrary, the joint tariff to be sustained in the interest of the shippers must be held merely to be a mere memorandum or a concise statement of a vast number of agreements between the initial carrier and each company operating a connecting line, either directly or indicertly, by other lines with the lines of the initial carrier.

While some stress is laid in the opinion of the court upon an expression of Paul Morton, in his testimony, that one of the objects was to maintain the published tariff rates, it clearly appeared from the other parts of his testimony that by this expression he meant that he wished to suppress the illegal practices of secretly cutting published tariff rates, while the same were in force. When he referred to maintaining the tariff rates he meant maintaining their lawful integrity by adhering to them while in force. That, he distinctly stated in his testimony. All of his testimony means nothing else than this.

Was there anything illegal in this?

The lower court based its opinion almost entirely upon some expressions found in the majority opinion of this court in the Trans-Missouri case, 166 U. S., 314, 315, which case arose under the Sherman Anti-Trust Act. In that case, however, it was shown that the fifth section of the Interstate Commerce Act had

nothing to do with that case one way or the other and in that section there was no express provision prohibiting the maintenance of traffic rates among competing roads by making such an agreement as the one involved. As the Interstate Commerce Commission is given no power to administer the Sherman Anti-Trust Act (*Spriggs* v. *B., etc., R. R.*, 8 I. C. Rep., 442), it is hardly necessary to discuss in this case, either that law, or the Trans-Missouri case. When an appropriate case is brought under that law it will be time enough to consider it. It may be sufficient to say to the argument put forward by the lower court, of the necessity of requiring competition between carriers no matter what its nature may be, that it is stated in the recent English work of Boyle & Waghorn, On the Law Relating to Railway and Canal Traffic, on page 155. Vol. 1:

"The system of reckless competition and ruinous reductions of competitive rates, which had created so much injury on the American continent, was developing in England, but was checked and kept within not unreasonable bounds by the operation of the Traffic Act of 1854."

The lower court seemed to have forgotten that the Interstate Commerce Law by its various provisions, does discountenance and in effect prohibit certain kinds of competition between common carriers which had theretofore existed,—that sort of competition which might appropriately be designated as "unfair," namely, by the secret cutting in favor of large or favored shippers of tariff rates which were ostensibly open to the public. In the fierce competition for the business of large shippers carriers did not hesitate

to deceive each other and the public by keeping open one rate for the public and secretly cutting it when in competition with another carrier for the business of such large shippers. In order to prevent that unhealthy competition section six was passed, which requires the common carrier to adhere to or maintain the published rate while in force, and forbids him to either raise or *lower* it except upon a certain number of days' notice.

Section two forbids him to unjustly discriminate in favor of one shipper as against another in respect to rates where the service and conditions are similar, yet such discriminations were rarely indulged in except through competition of the carriers themselves for such business. Section six was simply intended to reinforce section two.

Assuredly it is not a reasonable construction to be put upon the pooling clause (section five of the Interstate Commerce Law), to say it was intended to encourage any kind of competition and to prohibit any sort of restrictions thereon, since other provisions of the law did manifestly restrict the carriers in their competition with each other.

There was no such issue, however, or charge of anything illegal in this respect made in the complaints filed before the commission nor did the findings of fact of the commission justify any such charge or conclusion.

The complaints were merely directed against the use by the railway companies of refrigerator cars belonging to private car lines, some of which were controlled by fruit shippers, notably Mr. Earl. (Tran-

script, p. 16, paragraph 10.) Also that the Southern Pacific Company and the Southern California Railway Company had entered into a contract or agreement to pool and divide between them "the aggregate or net proceeds of the *earnings of all business* done by any of said defendants originating in southern California." (Transcript, p. 17; paragraph 12.)

The commission, however expressly stated it did not find under the evidence then submitted such a pool, but found that the arrangement with the private car lines was not illegal. (Tr., p. 77.) The commission stated in conclusion (Tr., p. 77), "the evidence is unsatisfactory as a basis for definite conclusions upon the following questions: Whether the defendant carriers pool their citrus fruit traffic or divide the earnings therefrom," etc.

In paragraph 14 of the complaint (pp. 17 and 18, transcript) it is simply charged that initial carriers reserved the right of routing for the purpose of making effective the agreements with the private car lines and the aforesaid pooling contract between the Southern Pacific Company and the Santa Fe Company, for a division of the earnings on this traffic; that the arbitrary routing of the carriers gave a preference to the private car lines.

In conclusion it was then stated, on belief, "that by reason of the aforesaid pooling arrangement" (between the Southern Pacific Company and the Santa Fe Company) "the several lines of railroad connecting with said defendant's line of railroad, are promised and guaranteed by the initial line their proportion of the business or a division of the business and

that consequently all competition for the carriage of said products is destroyed and the connecting carriers are not obliged to secure and hold the business by reason of good service."

This was far from alleging that there was any combination or agreement among competing connecting carriers even to divide the traffic.

It indisputably appeared from the evidence before the commission, and in fact was found, that prior to the adoption of the routing provision in the joint tariffs large shippers of this traffic, including especially the two complainants, had arranged with the private car lines to sell the routing in consideration of unlawful rebates received from such connecting lines as would pay the most, and such rebates were received by such complainants, and the business was routed by the private car lines alone. To put a stop to this illegal practice the initial carriers insisted, as a condition of making any joint rate with such connecting carriers that the initial carrier should thereafter route the shipment so that connecting carriers would have no incentive to make unlawful bids for the business, and when the routing rule was enforced, on January 1, 1900, the payment of these unlawful rebates ceased.

Among its conclusions, contained in its report the commission state (Rec., 74):

"The chief reason assigned by the defendants appears to be that it diminishes opportunity for successful arrangement between the shippers on the one hand and carriers and refrigerator car companies on the other for rebates. *It does appear that after the control of all routing was taken over by the defendants and away from the shippers, the practice of paying rebates practically ceased.*"

But the commission then state as a further conclusion:

"It further appears that a tonnage pool of this traffic as between the connecting carriers *not defendants* was established and that the defendants so controlled the routing as to give specific percentages of this traffic to their several connections, thereby fulfilling and giving effect to this unlawful and forbidden arrangement."

The commission continues its conclusion on this point as follows:

"Reason is found in the facts shown for the *belief* that the suppression of the practice of allowing rebates was only an *incidental result* of and was not the primary or principal *object* of the *defendant carriers*, in taking over to themselves control of the routing beyond their respective roads, but that the object was to give effect to the tonnage divisions before stated, between their connections. The testimony shows that the rebates had not been paid or borne by the defendants, but largely by the owners of the refrigerator cars in which the fruit was shipped and in part by eastern connections."

Referring to the facts stated in the report to see upon what these conclusions are based we will see how illogical and flimsy this conclusion is.

The routing provision in the joint tariff then in force is set out in transcript page 59. It is in effect the same as the routing provision found in the joint tariff now in force, and which was effective July 20, 1903 (Rec., 358), as follows:

"The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other

conditions, provisions and stipulations, hereinafter set forth."

The provision originally adopted and referred to in the decree of the lower court was changed long before the hearing so as to read as above.

The commission then found (transcript, p. 60) that on January 20, 1900, the defendant, the Southern California Railway Company, issued a *private* circular to *its own agents* containing instructions how shipments of citrus fruits should be routed, to the effect that in forwarding shipments they should be divided between connecting lines in accordance with the proportions shown on this sheet.

On page 61 of the transcript, the commission find that the part of the circular showing these percentages was not furnished at the hearing, and then state further:

"*Whether this circular has been cancelled or superseded by another does not appear.*"

Owing to the indefinite and loose way in which testimony is generally taken before the commission the issues being lost sight of, it is not strange that some further explanation was not then made in respect to this private circular, for if it had been deemed at all important or relevant an explanation would then have been furnished.

Section 15 of that law, moreover, provided that the alleged violations should appear "*by the testimony of witnesses or other evidence.*" No authority was given the commission to make findings without evidence.

It appeared, however, in the testimony in the lower court beyond question, that this circular was merely

for the private information of the agents of that initial line alone, and that connecting carriers had no access to the same, but that it was kept from them so that they did not know what proportion of this business any of them was to receive. The testimony further clearly showed that these percentages fixed by the initial carrier were changed by it from time to time, and were fixed without reference to any alleged agreement or understanding between the connecting carriers, and without consulting them.

The commission further find (transcript, p. 62):

"The testimony is that while the initial carriers do not always route as requested by the shippers, *they generally do comply with such requests.*"

As shown in the dissenting opinion of Mr. Commissioner Knapp, that finding also shows the absurdity of the conclusion of the commission.

The commission further find (transcript, p. 62):

"The defendants claim that the rule reserving to the initial carrier the right to route the traffic was necessary to enable them to secure a discontinuance of a practice of paying rebates which prevailed previous to the establishment of the rule and which is referred to in another part of these findings. Just how the the rule actually operates to prevent rebate payments by connecting lines or others is not disclosed. The situation warrants the inference, however, that these two initial carriers or systems, connecting with other carriers at various points, and they in turn connecting with numerous other carriers, as shown by the tariff are able by acting in concert, and routing as they see fit, to only send traffic over the roads of such carriers as fulfilled an agreement to refrain from making any rate concession to the shippers, and such influence of like character could doubtless be exerted by them upon the car lines which are also hereinafter referred to."

It was fully disclosed in the testimony taken by the commission itself and it appeared in the very evidence introduced by the complainants themselves before the commission, how the rule operated to prevent rebate payment by connecting lines and that such rule was adopted for that and no other purpose. Connecting lines were notified that if any of them did give rebates from the published joint tariff while in force the initial line would cancel the joint tariff as to such connecting carrier. The moment it was understood that the initial carrier and not the private car lines, would route, then all incentive on the part of the connecting carrier to bid by way of rebate to the shipper, either directly or through the car lines, for the routing was necessarily taken away.

In the letter dated January 15, 1900 (Rec., 820, 821, 822) President Ripley of the Atchison Company stated to Charles E. Maud, President of the Consolidated Forwarding Company, one of the complainants before the commission, and introduced by said complainants as their evidence, as follows, referring to the car line companies and their practices:

"*It is an open secret that these lines were in the habit of soliciting from our eastern connections a money consideration in return for their alleged influence upon the routing of business, and when such considerations were obtained it was the custom of those lines to divide the amount to a greater or less extent with the shippers of the fruit.* In some cases the owners of the car lines were also shippers of fruit, in which case whatever concessions they might be able to obtain from our eastern connections resulted to their advantage. The situation was choatic and resulted, as I believe, in a detriment to all concerned. It was certainly burdensome to the railroad companies, the

tendency being to crowd into California more cars than could be used, as well as to compel us to use certain classes of cars to which there were serious objections."

Further on he stated in the same letter:

"We were determined to break up the practice which we believed they had indulged in of selling the business handled in those cars to our eastern connections, *and this we could only do by taking the routing into our own hands, and notifying all such connections that any contracts or concessions made with or to the owners of these cars would be valueless, since we should pay no attention to routings.* It seemed to me, and still seems, that this deprives the car owners of any advantage over the shippers."

He stated, further on:

"You ask why we select the citrus industry alone in exercising our right to route freight for which we accept the responsibllity for through rates. The answer is that the right is one which we do not care to exercise except for our own protection and for the general good morals on the part of both carriers and shippers; and should circumstances arise which should inject into other business the same conditions that have heretofore existed as to the citrus business we should unquestionably desire to exercise our rights as to such other busines. At the present time there seems to be no necessity for so doing."

The commission could hardly have been oblivious to this evidence, and the other evidence, if its decision was to be based upon evidence.

On page 65 and 66 of the transcript the commission find:

"For seven or eight years prior to 1900 *the shippers of citrus fruits from Southern California to competitive points in the east received rebates ranging from* $15 *to* $25 *per car, which were paid in a great many cases by the car line companies.* * * * *The eastern*

connections of the defendants also paid these rebates or a part of them through their representatives direct to the shippers. These eastern connections were also shown in some cases to have paid the car line companies more than the actual car mileage charges, in order, as Mr. Earl of the Continental Company testified, *to help out the car lines in paying the rebates.* * * * Rebates were paid when the car was not refrigerated as well as when it was, though they were greater when refrigeration was used. The average rebate was $15 when not refrigerated, and $25 when refrigerated. *It appears that the eastern connections of the defendants were willing to pay these rebates, or their share of them, in order to have the traffic routed over their lines.* Mr. Naftzger, president of the Southern California Fruit Exchange, filed a statement showing rebates received *by that complainant* during the four years, 1895, 1896, 1898 and 1899. The rebates for 1895 and 1896 were from the Overland Despatch. The reason why 1897 is omitted is because he claims to have had no data for that year. These rebates aggregate for those four years $37,165 from shipments under refrigeration, and $137,326, from shipments not refrigerated, making a total of $174,-491. As the practice of paying these rebates was general, the shippers came to regard them as part of their legitimate returns from the orange business. *The payment of these rebates was discontinued January* 1, 1900, *and there is no evidence that the practice has been resumed.*"

Not only did the large shippers come to regard these illegal rebates as a part of their legitimate profits, but the commission itself winked at the matter and treated it as proper. Instead of performing its duty under section twelve of that law by seeing that these shippers were prosecuted for violating section ten of the law, and placing the matter before the proper District Attorney of the United States for that purpose the commission on the contrary gave to the complainants

who were found guilty of violating this law an order and a remedy which would enable them to again indulge in their illegal practices.

How can it be expected this law will be respected if shippers who clamor for and receive these unlawful rebates shall not only go unpunished but shall on the contrary be regarded by the body specially created to enforce this law as receiving but what they are justly entitled to? Is the man who demands a bribe better than the one who is forced to yield?

On page 68 of Record the commission further stated as a fact:

"The routing circular of January 20, 1900, extracts from which appear herein in connection with the finding as to the rule of the carriers reserving to themselves the routing, shows that the orange shipments are forwarded by the initial carrier so as to give certain percentages of the traffic to connecting lines."

We therefore see from this extract from the report of the commission that its conclusion in question was based altogether upon the showing of a private routing circular of the Southern California Railway Company of January 20, 1900, to its own agents (which the commission did not know as they state was then in force or not), and to the finding in respect to the existence of a rule in the joint tariff reserving to the initial carrier the right to route. This, however, did not justify the assumption or conclusion that the routing provision was adopted to give effect to any supposed or suspected agreement or understanding between competing connecting carriers that this business should be divided between them upon any understood or agreed basis. The conclusion, therefore, appeared to be wholly unsupported by the findings.

The evidence before the lower court in any event, fully explained the routing circular of January 20, 1900, and showed that connecting carriers were not aware of its existence or of the percentages therein contained. On the contrary, the initial carrier varied from these percentages fixed by itself, from time to time as it pleased.

But as the commission found that the initial carriers generally comply with the request of the shippers as to routing, then, as stated in the dissenting opinion of Commissioner Knapp, it is difficult to understand how the initial carriers could be regarded as giving effect to any supposed arrangement between connecting lines for a tonnage division. Moreover, what interest or concern could the initial carrier have had in entering into and carrying out an alleged agreement between connecting lines for a division of the traffic over such other lines? How could such an arrangement profit the initial line?

The conclusion of the commission upon the face of its own report is indeed remarkable, yet after all, could it be expected that a fair, candid and unprejudiced finding or decision would be made in favor of the carriers by a tribunal invested with inquisitorial powers, and which generally assumes the attitude of prosecutor against the carriers? It is not in human nature that a prosecutor can at the same time be an impartial judge of the conduct or rights of those to whom he stands in the attitude of prosecuting.

In any event, had the conclusion of the commission been well founded, the only order, if any, which would have been appropriate in the premises would be one

which would inhibit the carrying out of a specific, unlawful agreement or combination, if any, found to exist. The right to route cannot be forever condemned upon any such ground or for that reason. Yet the order of the commission is not confined to any particular agreement nor to any particular joint tariff. It operates forever, as long as the commission shall be pleased to allow its order to stand to forbid the initial carrier from routing over connecting lines, while at the same time compelling the carrier to give to the shipper the joint rate which is made by the initial carrier as a consideration for the privilege of itself routing.

VII.

EVEN THE CONCLUSION OF THE COMMISSION DID NOT SHOW A VIOLATION OF THE POOLING CLAUSE. THAT CLAUSE CONSTRUED.

The conclusion of the commission, however, was merely to the effect that there was some arrangement or agreement between connecting lines *not defendant's* for a tonnage division of this traffic. It may be inferentially assumed that some of these connecting lines were competitive in some respects or in certain territories, though this is not stated in the findings in the report. As nearly two hundred carriers were embraced in these tariffs, and their various lines by connections reached all parts of the United States, many of them would not be competitive at all. Nevertheless, even such an arrangement, if it had existed, would not have been a violation of the pooling clause, even by

such connecting carriers, if competitors. Section 5 of the Interstate Commerce Law reads:

"That *it shall be unlawful* for any common carrier subject to the provisions of this act, *to enter into any contract*, agreement or combination with any other common carrier or carriers, *for the pooling of freights of different and competing railroads*, or *to divide between them the aggregate or net proceeds of the earnings of such railroads*, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

In any event this only renders unlawful, for the purposes prohibited, contracts between competing carriers.

It is made unlawful for common carriers, if competing railroad companies,

First. To enter into any contract, etc., for the pooling of their freights;

Second. To divide between them the aggregate or net proceeds of the earnings of such railroads.

The first thing prohibited is "*to enter into an agreement*" or combination for pooling. The next thing prohibited is the act of making a division of the aggregate or net proceeds of the earnings of such competing railroads. As ordinarily the entering into of an agreement and acting under it would constitute but a single offense, it was, therefore, deemed advisable to alter such rule by providing, as in the concluding sentence, that in the case of "*an agreement for the pooling of freights,*" each day of its continuance should be deemed a separate offense. No such provision, of course, was necessary to the second case provided, namely, the mere division of the aggregate or net pro-

ceeds, as such division would constitute but a single act and therefore, in any event, but a single offense.

If Congress intended that the words in the first part of the section "to enter into any contract," &c., was to reach to and qualify the latter part, "to divide the earnings," as claimed by the lower court, it would be difficult to understand the meaning of the concluding sentence, and why each day of an agreement for pooling of freights should be made a separate offense, and why a similar provision should not be made in case of an agreement to divide the earnings if it was intended that the words "contract, agreement", etc., in the first part of the section applied as well to qualify the latter part referring to a division of the earnings.

It was contended by the lower court that Congress intended to prohibit a carrier from entering into any contract for the pooling of freights, or to enter into any contract to divide earnings, in order to show that the word "freights" had a different meaning from the word "earnings." That, however, would leave an absurd result to follow from the last provision of this section.

The lower court seemed to think that any other construction than that adopted by it would be ungrammatical. But that is not very important. Other parts are ungrammatical. The main object is to ascertain what Congress intended.

What then did Congress intend by the word "freights" in the clause "any agreement for the pooling of freights"?

The section in question is not only highly penal and must therefore be strictly construed, but the word

"freights" is used in this clause in connection or association with the word "earnings" and should, therefore, be given a kindred meaning if possible.

Schenley's Appeal, 70 Pa. St., 101 and 102.
Hadley v. *Perks*, L. R., 1 Q. B., 455, *et seq.*
Lewis' Sutherland on Statutory Construction, Secs. 414, 415 and 416.
Holman's Appeal, 106 Pa. St., 502-507.
Newport News Company v. *U. S.*, 9 C. C. A., 579; s. c., 61 Fed., 488.

The word "freights" in this clause means, not the commodity or traffic carried, but the receipts or compensation for the carriage thereof. It cannot, evidently, be given both meanings. If it meant only the commodities carried, it would not include passenger business. If, on the other hand, it was intended to mean the receipts, it would also include compensation derived from passenger carriage.

The lower court seemed to think there could be no division of passenger business because the passenger would determine for himself the route he wished to take. The Interstate Commerce Commission, not long ago, however, found that there was just such an arrangement to divide between the various railroads the immigrant passenger business from New York, and it is almost as easy to divide up the passenger carriage, where there is a large movement of the same, in one direction, as there would be of the freight.

In 3 Kent's Commentaries (12th ed.), p. 219, that eminent writer says:

"*Freight*, in the *common acceptance of the term*, means the *price* for the actual transportation of goods

by sea from one place to another, but in its more extensive sense, it is applied to all *rewards or compensation paid* for the use of ships, including the transportation of passengers."

In *The Main* v. *Williams*, 152 U. S., 129, Mr. Justice Brown said:

"By the law maritime the word "*freight*" is used to denote *not the thing carried*, but the *compensation* for the carriage of it."

He then quotes from a former opinion as follows:

"In Saxon, from which much of the English language is derived, it is called *fracht*, whether it be a *compensation* for transportation in ships by sea or carriage by land, either of goods or persons, in gross or detail."

To the same effect see,

Vol. 4, Words & Phrases Judicially Defined, pp. 2973 to 2976.

Giles v. *The Cynthia*, 1 Pet. Adm., 203, Case No. 5424, Vol. 10, Fed. Cas., pp. 369, 370.

Poland v. *The Spartan*, 1 Ware, 130, Case No. 11246, Vol. 19, Fed. Cas., 912, 914.

In the case of *Lord* v. *Neptune Ins. Co.*, 10 Gray's Reports, 112 and 113, Chief Justice Shaw, said:

"The term "*freight*" has several different meanings; as the *price to* be paid for the carriage of goods; or for the hire of a vessel under a charter party or otherwise; and sometimes to designate goods carried, as a "freight of lime" or the like. But as a subject of insurance it is used in one of the two former senses, and in this policy it means plainly the aggregate of the prices to be received at agreed rates, for the carriage of several parcels of specific goods as expressed in several bills of lading."

"To pay the freight," is a common and usual ex-

pression. In its ordinary meaning the word covers compensation or pay for the carriage, or the earnings of a carrier. In another sense, it is true, the word might, if the context plainly so indicated, be intended to designate goods or commodities carried. Thus, in the sixth section, the phrase is "in every depot * * * of such carrier where *passengers* or *freight*, respectively, are received *for transportation.*" There, the word "freight," in connection with the words "are received for transportation," plainly means the commodity carried. But in that sense it would not include passengers, and the result would then follow that an agreement for pooling the commodities carried, if "freight" were so used, would be prohibited, while an agreement for pooling passenger traffic would not be. Again the word "freight," when intended to mean the traffic or commodities carried, is generally comprehensive in its scope, and the singular instead of the plural—"freights"—should be properly used in that connection.

But "pooling" used as referring merely to an agreement for a division of the traffic to be carried by the respective companies, would indeed be an awkward and inappropriate word to use.

The meaning of a word is usually determined by the context. The maxim *noscitur a sociis* and the rule of *ejusdem generis* are usually applied in the interpretation of contracts and statutes to determine in what sense a particular word may be used. The mind usually groups similar ideas together. The word "freights" in Section 5, used in connection or association with the word "earnings," as well as from the fact that in pooling contracts at the time of the pass-

age of this law the usual provision was to pool the receipts or earnings, it is evident, was intended to cover the receipts, that is, the pay or compensation received from any kind of traffic on competing railroads.

A railroad pool, so-called, had a well understood meaning at the time of the passage of this law. Pooling contracts or arrangements between competing roads were well known in England, from whence they were borrowed, but such contracts had reference only to earnings.

In 1 Wood on Railroads (Minor's edition), Sec. 207, which at the time of the passage of this law was a recognized authority, it is said:

"In England it is held that pooling contracts or arrangements between competing roads by which they agree to divide their *joint earnings* upon certain classes of business, or even their entire earnings, are legal and valid, where it does not appear that the interests of the shareholders or of the public are prejudiced thereby."

See, also, Sec. 207a.

In *U. S.* v. *Trans. Mo. Ft. Assn.*, 58 Fed., on p. 65, Judge Sanborn, said:

"Contracts between competing corporations, commonly termed 'pooling contracts' to divide their *earnings* from the transportation of freight *in fixed proportions*, have long been held void by the courts as against public policy."

Pooling contracts, so-called, were usually made between competing railroads by which either the earnings of the railroads were combined by placing the same under some common authority or control, and then divided, according to a fixed ratio; or the earnings or

receipts of a particular character or class of traffic were combined and divided according to such ratio.

That was the case of *Shrewsbury, etc. Co.* v. *L. & N. W. Ry. Co. et al.*, 2 Mac. & Gord., 324, in which Lord Cottingham held such a contract for a division of earnings between competing roads to be valid, and in which, in 17 Ad. & Ell. (N. S.), 652, a common law court held the same contract to be valid.

See also the similar cases of *Hare* v. *L. & N. W. Ry. Co.*, 2 John. & Hemm., 80, and *Central Trust Company, of New York* v. *Ohio Central Railroad Company*, 23 Fed., 306; and *Nashua, etc., R. Co.* v. *Boston, etc., R. Co.*, 19 Fed., 804, where similar pooling arrangements were sustained.

In the last case, as in some other cases, while it was admitted that an agreement for pooling was illegal at common law, so as not to be enforceable in the courts, yet the court held, where the contract had been performed and nothing remained to be done but to distribute the funds pooled, it would sustain an action to recover the proportion due, not upon the express contract, which was illegal, but upon an implied contract to pay moneys which belonged to the plaintiff, as in an action for money had and received.

In view of the decisions of the latter character it was deemed advisable by Congress, not only to make it unlawful to enter into any contract, agreement or combination for pooling, but also to make it unlawful and prevent, by reason of any such decisions, any actual division of earnings, even in pursuance of an implied or secret understanding, where an illegal contract had been executed. Congress, no doubt, also con-

templated that it might be difficult to prove an actual agreement, yet the fact of a division of the earnings might still be a matter susceptible of proof, and therefore provided in the statute for both cases.

No doubt, in view of the conflict among the courts in this country as to the illegality of such pooling contracts, it was deemed advisable by Congress to set the question at rest by the Fifth Section, and make such contracts or arrangements unquestionably unlawful, and at the same time to make an actual division of earnings, whether a contract was proved or not, also an unlawful thing. Section 5 is altogether criminal and penal in its nature. No private right to recover damages is given under its provisions on account of anything so forbidden to be done.

The word "pooling" however, used in connection with freights, would be an awkward word to cover a mere division of traffic to be thereafter received. In such a case there could be no pooling in the ordinary acceptance of that term.

In Webster's Dictionary a "pool" among railroads is defined as:

"A mutual arrangement between competing lines, by which the *receipts* of all are aggregated, and then distributed *pro rata,* according to agreement."

A similar definition is found in the Standard Dictionary, as follows:

"A combination, whereby railroad companies, or other like corporations, agree to fix rates or prices, and divide the *collective profits* of the business *pro rata,* generally formed to overcome the effects of excessive competition."

"To pool" is defined by Webster:

"*To put together;* to contribute to a common fund, on the basis of a mutual division of profits or losses."

"To pool," in the Standard, is defined:

"*To put into a pool or common fund* to be shared according to agreement, as competing railroads may pool their *earnings.*"

"To pool," therefore, is appropriately used in connection with the words "receipts" or "earnings," since they may be combined and then divided according to an agreed proportion.

The lower court, however, referred to a charge of Judge Hammond to a grand jury, *In Re Pooling Freights,* 115 Fed., 589, wherein it was stated in an oracular way that section 5 of the Interstate Commerce Law contemplated a physical division of traffic. The definition in the Century Dictionary, referred to in his opinion, however, contemplates rather, in respect to transportation lines, a distribution of profits of the business according to a special agreement. Of course, the question involved was not at all debated before him.

Prior to the passage of this law, the usual provision in pooling agreements, as they were regarded as of somewhat doubtful validity, was to place the receipts or earnings from the kinds of traffic covered by the agreement beyond the control of the carriers, the parties to the agreement, by putting such receipts or earnings under some common authority or control to be afterwards distributed by such authority between the carriers in accordance with the percentage agreed upon. This, of course, was a pooling in the proper sense of that term.

The foregoing construction is borne out by the history of the passage of this law. The original "Cullom Bill," which is largely the basis of the present law, introduced in the Senate May 13, 1886, contained the only provision on the subject of "pooling," in section 2 thereof, which read as follows:

"That the said commission shall specifically inquire into that method of railroad management or combination known as pooling, and shall report to Congress what, if any, legislation is advisable and expedient upon that subject."

From this it is obvious that the Senate, in the first instance, was not satisfied that pooling contracts were illegal or objectionable, or that they should be further prohibited. The Senate, therefore, wished further light to be obtained by the proposed commission.

In the original "Reagan Bill," introduced in the House, March 8, 1886, there is found in section 2 thereof the only provision on the subject of "pooling," which read as follows:

"And it shall be unlawful for any person or persons carrying property as aforesaid to enter into any contract, agreement, or combination for the pooling of freights, or to pool the freights of different and competing railroads, *by dividing between them the aggregate or net proceeds of the earnings of such railroads, or any portion of them;* and in any case of an agreement for the pooling of freights or earnings as aforesaid, each day of its continuance shall be deemed a separate offense."

It is obvious that this provision intended only to make it unlawful for carriers, *first, to enter into any contract, etc.,* for the pooling of freights of different and competing railroads *by* dividing between them the aggregate or net proceeds of the earnings of such

railroads, or any portion of them; and, *second*, to pool such freights in the same way, that is, to consummate any such agreement, or in the absence of any proven agreement, any sort of a tacit or implied understanding for such purpose, by actually pooling the freights of different competing railroads *by* dividing between them the aggregate or net proceeds of the earnings of such railroads, or any portion of them.

Not only was the making of such a contract for pooling of freights *by* dividing the earnings made unlawful, but also it was made unlawful to pool in fact the freights of competing railroads *by* dividing the earnings. In that provision, also, as in the present law, in the case of "an agreement for the pooling of freights or earnings as aforesaid," each day of the continuance was made a separate offense; as, without such provision, the making, acting under and carrying out from time to time, such an agreement would have constituted but a single offense, though it necessarily consisted of a series of acts, each and all of which should be prohibited.

The conference committee between the House and the Senate concluded to adopt the provision of the "Reagan Bill" on this subject, and slightly changed the phraseology so as to read as it stands in section 5 of the present law. However, there was evidently no intent to change the meaning of the pooling clause in the "Reagan Bill," or to extend its operation, since the House was apparently satisfied with the provision as it stood, and the Senate, by the "Cullom Bill' evidently considered that there should first be further special inquiry by the commission which was to be

created to determine the advisability of adopting any provision on the subject at all.

Surely, there was no intention evidenced to change the meaning of the word "freights" as plainly used in the "Reagan Bill." The endeavor was to make the section brief or concise.

The act nowhere prohibits contracts fixing rates or restricting competition. The discussions in Congress and the bill show there might be ruinous and senseless competition in cutting rates to the destruction of one of the parties and the ultimate detriment of the public, which it was expected would be obviated by this law. All the arguments were in favor of stability in rates.

Thus, "freights" must be given the meaning of "receipts," which is akin to the word "earnings," for if it be given the other meaning of "traffic" or rather commodities received for transportation, then it would follow that the section would prohibit the making of an agreement for a division of such commodities carried, but it would not prohibit the making of an *agreement* for the pooling of receipts or earnings. It is rather to be supposed that Congress intended to prohibit the making of contracts for pooling of receipts or earnings, which was the common form of such pooling contracts, just as it also prohibited the actual division of earnings where, it was surmised, a prior definite agreement for that purpose might not be susceptible of sufficient proof, or where such a division might otherwise be enforced by the courts under an implied agreement in an action for money had and received,—the illegal contract having been consummated or ended.

In respect to the charge in the complaints before the commission that the defendants pooled their earnings from this traffic, the commission state in their report that the evidence upon which to base a finding in that respect was insufficient or unsatisfactory, and that question was, therefore, reserved for further consideration by them. (Trans., 77.) In view of such a statement, and of the failure to make a finding upon such question, it is, of course, not proper for this court to enter into an original investigation of the matter. Any evidence in the record bearing upon such question is not pertinent to this case.

See,

East. Tennessee, etc. Ry. Co. v. *Interstate Commerce Commission,* 181 U. S., pp. 2, 27 and 28.

L. & N. Rld. v. *Behlmer,* 175 U. S., 674, 675 and 676.

Therefore, we do not deem it proper to discuss any evidence upon that proposition.

The record in this case has been unduly and unreasonably stuffed by plaintiffs' attorneys industriously lugging in a mass of irrelevant and impertinent data and statements not even arising to the dignity of evidence, but which has rendered this record of unwieldy bulk.

There was, however, no agreement shown between competing connecting carriers for any division of this tonnage or traffic. The initial carriers were insisting upon the right to route this traffic, for their own protection, and not for the benefit or protection of any of their connections.

VIII.

ON THE QUESTION OF UNDUE PREFERENCE, AS STATED BY THE COMMISSION AND AS EXPOUNDED BY THE COURTS.

As the lower court, however, did not base its decision upon any assumed violation of section 3 or the "undue preference" clause of the act, probably this court is not called upon to seriously consider any such question. As the subject, however, is touched upon in the conclusions of the commission, out of abundant precaution we will here discuss the same.

The only reference in the report of the commission to any "undue preference" is found in the "*conclusions*" of the commission, *not* made as a "*finding of fact*" by them, and is as follows:

"Our *conclusion* is that the practice of the defendant carriers in denying to the shippers the use of their transportation facilities by the established routes is in violation of the statute, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage, and gives to the carriers an undue and unreasonable preference and advantage."

This conclusion is simply to the effect that shippers of this traffic are subjected to an unjust disadvantage because the carriers are given an undue advantage by reason of the routing provision. It is not found anywhere that shippers of this traffic are subjected to an undue disadvantage or prejudice as compared with other shippers of any other commodities coming in competition therewith.

Under section 14 it is made the duty of the com-

ssion after an investigation to make a report in iting in respect thereto, "which shall include the *dings of fact* upon which the *conclusions* of the com- ssion *are based.*"

It is then provided:

"* * * and *such findings* so made shall thereafter all judicial proceedings be deemed *prima facie* evi- nce as to each and every *fact found.*"

In section 16 of the act, approved February 4, 1887, originally passed, and being the section which con- rs upon Circuit Courts jurisdiction to investigate d determine the lawfulness of an order or require- ent of the commission, and enforce the same, if lid, it was provided, in respect to the hearing in ch courts:

"And on such hearing *the report* of said commission all be *prima facie* evidence of the matters therein ated."

By the Act of March 2, 1889 (23 U. S. Stats. at rge, p. 55), Congress made a significant amendment the above provision by making it read as follows:

"And on such hearing the *findings of fact in the port* of said commission shall be *prima facie* evi- nce of the matters therein stated."

The intent of Congress is thus clearly manifested this amendment that the "*findings of fact*" in the port, as in the previous section, and not the "*con- usions*" or deductions in the report, should be con- dered as *prima facie* evidence of the matters stated.

It will not do to ignore the above provisions and y they are meaningless. In any event, it must be vious that even "findings of fact" in the report e entitled to just such weight as the report shows

that the commission gave to the consideration of the particular question, and no more. Whatever deference may be due to the commission, burdens should not be unjustly placed upon the carriers because the commission may have failed to give due consideration to the facts or the evidence or the questions involved. The findings of fact in the report of the commission are, after all, merely evidence making a *prima facie* case, and the court in considering such findings in the light of the other evidence introduced should give just such weight to these findings as evidence of the facts as they are entitled to in view of all the evidence, and no more.

See

Western N. Y., etc., R. Co. v. *Penna. Ref. Co.*, 137 Fed., 350 and 351; C. C. A., 3rd Circuit.

Section 3 makes it unlawful for any common carrier:

"To make or give and undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The commission nowhere find or state that the citrus fruit traffic is subjected to an unjust disadvantage as compared with any other particular traffic; nor that any shipper or shippers thereof are subjected to any unjust disadvantage as compared with any other shipper or shippers in competition. Nowhere does it find

that the shippers of citrus fruit are injured by reason of the initial carriers' not enforcing the routing provision in respect to some other kinds of traffic. No case was presented in the report even of one shipper being subjected to an "unreasonable disadvantage" by reason of some other shipper being given an "undue advantage." Indeed, the evidence very plainly shows that the shippers of this citrus fruit traffic are exceptionally favored and this traffic is given a preference and advantage over all other traffic. It is given a preference in the character of the service rendered in respect to the time of transportation, in the character of cars in which the commodity is handled, in the unusual care that is taken during its transportation, and in the extraordinary and unusual privilege of diverting "tramp cars" while in transit at the expense of the initial carriers,—a privilege not accorded to other traffic or to other shippers.

In respect to the enforcement by initial carriers of the routing provision in the tariffs, usually applied only in relation to this traffic, the evidence abundantly shows that such enforcement was necessary to put an end to the notorious and unlawful practice generally indulged in by shippers of citrus fruit, and through the instrumentality of the private car lines, of soliciting and accepting rebates from connecting lines, the private car lines accomplishing that result through routing the business and selling it to the highest bidder among the connecting lines, greatly to the detriment of the business of the initial lines. *The routing, which was claimed to be such a valuable privilege of the two complainants before the commission was done*

altogether by the private car lines, which sold the same for rebates.

If such an unlawful practice of rebating had been in effect in respect to other traffic, the initial carriers would soon have stopped it by assuming the routing thereof and thus preventing the connecting carriers from making or carrying out any such unlawful bargains.

While the question of "undue preference," etc., is generally a question of fact, depending upon the circumstances of each particular case, yet it is well settled by both the English and American decisions that in order to give a right to a shipper to complain of an "unreasonable disadvantage," etc., he must show that he has been unduly prejudiced by reason of some other shipper being given an "undue advantage" in respect to a commodity which comes in competition.

This was the view taken in the opinion of the late Mr. Justice Jackson, in the case of *Int Com. Com.* v. *B. & O. R. R. Co.*, 43 Fed., 47. Referring to the "undue preference" clause, he says:

"These words necessarily involve the idea or element of comparison of one service or traffic with another *similarly situated and circumstanced*, and require that, to be 'undue and unreasonable,' the preference or prejudice must relate and have reference to *competing parties*, producing between them unfairness and an unjust inequality in the rates charged them respectively for contemporaneous service under substantially the same circumstances and conditions. In determining the question whether rates give an 'undue preference' or impose an 'undue prejudice' or disadvantage, consideration must be had to the *relation which the persons or traffic bear to each other and to the carrier.*"

In other words, the mere fact that in a particular case a preference or advantage has been given to one shipper or one kind of traffic over another is not sufficient to meet the condemnation of this section of the law. The preference or advantage must be "undue" and the prejudice or disadvantage must be "undue and unreasonable." There can be no undue disadvantage if shippers of like freight under similar circumstances are treated alike. There can be no prejudice at all to one shipper, unless some other shipper is given an advantage over him which, in fact, prejudices him. No such prejudice can arise unless the restrictive parties are competitors.

Therefore, in the recent decision of the Circuit Court of Appeals, Seventh Circuit, in *United States* v. *Chicago and Northwestern Ry. Co.*, 127 Fed., 785, it was held that the Government, in the transportation of its troops, could not complain because it was not given the party-rates which the tariffs of the Railway Company provided as open to theatrical troupes and others giving certain kinds of entertainments. It was said that the Government did not move its troops under the party-rate tickets, and, moreover, it was not within the class designated in these tariffs as being a class which was likely to afford more business to the carriers offering the party-rates. It is said in the opinion, with reference to the Government:

"It is not engaged in the same business as any of those classes that are given special rates, *is not in competition with them, and is not therefore injured or discriminated against.* As was said by the Supreme Court in *Interstate Commerce Com.* v. *B. & O. R. R.*, 145 U. S., 263, 'It does not operate to the prejudice of

the single passenger, who cannot be said to be injured by the fact that another is able, in a particular instance, to travel at a less rate than he.' "

The "undue preference" clause in Section 3 of the Interstate Commerce Law was taken practically word for word from a similar clause in Section 2 of the English Railway and Canal Traffic Act of 1854, and the construction thereof prior to its adoption in the Interstate Commerce Law will be followed by the American courts as a part of the statute.

In *Hozier* v. *Caledonian Railway Company*, 1 Nev. & Mac. N. (Railway and Canal Traffic Cases), 27, a railway company, having fixed the rates for passengers traveling between the terminii of the line according to a much lower scale than the rates exigible from passengers traveling between intermediate stations: Held, no one has a title to complain of such proportional rating unless there be a competition of interest. Lord President M'Neill said, in reference to the undue preference clause:

"It does not appear to me to be a matter which the statute provides for at all. It provides for giving undue preference to parties *pari passu* in the matter, but you must bring them *into competition* in order to give them an interest to complain."

This language is quoted with approval in *Interstate Com. Com.* v. *B. & O. R. R. Co.*, 145 U. S., pp. 282 and 283. On page 284 the Supreme Court adds:

"But so far as relates to the question of 'undue preference' it may be presumed that Congress in adopting the language of the English act had in mind the constructions given to these words by the English courts and intended to incorporate them into the statute."

In *Nicholson* v. *Great Western Ry. Company*, 1 Nev.

& MacN. (Railway and Canal Traffic Cases), 150; s. c., 7, C. B. (N. S.), 755, Chief Justice Erle said:

"It is said in the affidavits that Raubon is good hearth coal, and Lydney is in great part good furnace coal. If this be so, it may account for a different demand. In the Catterham case the court declared the necessity for caution in controlling rights on so vague a ground as undue disadvantage to others; and certainly extreme caution is necessary in ascertaining that there is a real grievance, requiring a remedy, before the court interferes so as to annul a very important contract, and to destroy very valuable interests, and to take away the power of making any contracts in future with security."

In *Lees and others* v. *The Lancashire and Yorkshire Railway Company*, 1 Nev. & MacN. (Railway and Canal Traffic Cases), 352, before the Railway Commissioners, where a railway was compelled by the increase of its business to separate mineral from its goods traffic at O. station, and transferred the former to another station, retaining only at O. station the mineral traffic in favor of the corporation of M., who lighted M. and its suburbs, and whose gas works were close to O. station, communicating therewith by a siding, so that such traffic could be removed at once from O. station without impeding the goods traffic, the Railway Commission found that the preference to the corporation was neither undue nor unreasonable. On page 366 they say:

"It is not contended that the Lancashire and Yorkshire Railway Company fail to afford reasonable facilities for coal traffic by placing their depot for coal at Miles Platting; nor does it appear that they designed to subject any particular person to any disadvantage, because, with one exception, the consignees of coal were all alike in a general sense affected by the re-

moval from Oldham Road, and the measure applied indifferently to them all. The exception was the corporation of Manchester, and to that body undoubtedly the Company have given a preference, by carrying coals to Oldham Road Station for them, and for no one else. * * * Of the preference in question before us, we observe, in the first place, that it has not about it certain points or incidents that would at once condemn it. Messrs. Lee, the complainants, were sufferers by the company ceasing to deliver their coal at Oldham Road, where they had incurred expense in acquiring a piece of ground the better to conduct their business. But the preference given to the corporation was not *per se a detriment to them. There was no competition in interest to make it so.* The corporation did not sell coal."

In *Nicholson and another* v. *Great Western Railway Company,* 1 Nev. & MacN. (Railway and Canal Traffic Cases), 121; s. c., 5 C. B. (N. S.), 366, it was held that the undue preference clause was not contravened by a railway company carrying at a lower rate, in consideration of a guarantee of large quantities and full train loads at regular periods, provided the real object of the company be to obtain thereby a greater remunerative profit by the diminished cost of carriage, although the effect may be to exclude from the lower rate those persons who cannot give such a guarantee. Crowder, J., said on pp. 138 and 139:

"When the statute speaks of 'undue and unreasonable preference or advantage' and 'undue and unreasonable prejudice or disadvantage', it uses language implying that there may be advantage to one person or one class of traffic and prejudice to another which would not be within the act of parliament. The preference and prejudice must be 'undue' or 'unreasonable' to be within the statute. And although in the case now before the court, it is quite manifest that the Raubon Coal Company have many and important ad-

vantages in carrying their coal on the Great Western Railway as against the complainants and other coal owners in the Forest of Dean, still the question remains,—are they 'undue' or 'unreasonable' advantages? This mainly depends upon the adequacy of the consideration given in return to the railway company for the advantages afforded to the Raubon Coal Company."

See also:

Jones v. *The Eastern Counties Railway Company,* 1 Nev. & MacN. (Railway and Canal Traffic Cases), 45; s. c., 3 C. B. (N. S.), 718.

Wannan v. *The Scottish Central Railway Company,* 1 Nev. & MacN. (Railway and Canal Traffic Cases), 237; s. c., 3 Sess. Ca., 1373, 3rd Ser.

Bennett v. *Manchester, Sheffield and Lincolnshire Railway Company,* 1 Nev. & Mac N. (Railway and Canal Traffic Cases), 288; s. c., 6 C. B. (N. S.), 707.

In *Phipps et al.* v. *London & North Western Railway Company,* 8 Nev. & MacN. (Railway and Canal Traffic Cases), 83; s. c., Law Reports, Queen's Bench Division, 1893, Vol. 2, p. 236 *et seq.,* Lord Herschell, referring to the "undue preference" clause, said, on page 95:

"The question therefore which the tribunal, whether it be the court or the commissioners, before whom such a question comes, has to determine is whether an undue preference or advantage is being given, or whether the one party is being unduly prejudiced or put to a disadvantage as compared with the other.

I think it is clear that the section implies that there may be a preference, and that it does not make every inequality of charge an undue preference.

Of course, if the circumstances so differ that the difference of charge is in exact conformity with the difference of circumstances, there would be no preference at all. But, as has been pointed out before, what the section provides is that there shall not be an undue or unreasonable preference or prejudice."

Therefore, in the recent English Work by Boyle & Waghorn, published in 1901, entitled "The Law Relating to Railway and Canal Traffic," in Volume I, on page 158, the English cases, construing the "undue preference" clause are summed up as follows:

"The words 'preference' and 'advantage' of themselves give rise to questions of considerable importance.

Applicants occasionally desire to construe these words as the equivalent of 'benefit,' and to claim that whatever conveniences or concessions are granted to one trader or class of traffic are due to be granted to all others.

The courts do not accept this view; there is no question of preference when different matters are under consideration, and *one person is not placed at an advantage over another if their traffic has nothing in common.*

Expressing the point in another form, the courts read both limbs of the preference section together, and hold that *the preference of the first part must be accompanied with the prejudice of the other,* and that *the 'disadvantage' of one must be connected with the 'advantage' of the other,* before the provisions of the section come into operation."

On page 159 they continue:

"In the same manner with merchandise traffic, a colliery supplying cannel coal to gas-works is not aggrieved because common coal, not used for the same purpose, and of much less value, is conveyed at cheaper rates. The coal of North Wales and the steam coal of South Wales *do not compete* at Birkenhead *so closely* that it is incumbent upon the court to ascertain the

precise equivalent of rates for 30 and 150 miles respectively. A coal merchant at Yarmouth receiving his coals by sea has no grievance in respect of land-borne traffic to Yarmouth, however low the rates may be, for he has no traffic affected by it, and a colliery owner is at no disadvantage because the Manchester corporations are allowed facilities for the conveyance to their gas-works which are not accorded to an applicant, who is, however, placed on the same footing as all other coal-owners or merchants *with whom he is in competition.*"

While it is said that the question of undue preference, etc., is generally one of fact just as questions of fraud, undue influence, and negligence, are frequently questions of fact, yet it is manifest that under our system of jurisprudence and constitutional provisions, when a question comes into court it must be determined by some existing rule of law which is applicable to the solution of similar cases.

See, in construing similar statutes:

Hoover v. *Pa. R. Co.*, 27 Atl., 282.

Houston & T. C. Ry. Co. v. *Rust & Dickens*, 9 Am. & Eng. Railroad Cases, 123.

Nothing more can be meant by the statement that it is generally a question of fact than that such question in each particular case will depend upon the many facts and circumstances shown to exist in such case concerning the particular parties and traffic which may be the subject of comparison. In the end it involves a conclusion of law and fact, for some rule of law must be applied to the evidence or facts to reach a conclusion or determination.

It is not permissible in this country to vest a court or commission with arbitrary power of determining a

question which may come before them, except by some rule applicable to similar cases. Such a statute would not afford due process of law. The rights of the parties would depend upon the will of the judge alone. Ours is a government of laws and not of men.

Yick Wo. v. *Hopkins,* 118 U. S., 370.

See also:

Matthews v. *Murphy,* 63 S. W., 785.
L. & N. Rld. Co. v. *Commonwealth,* 99 Ky., 132; s. c., 35 S. W., 129.
L. & N. Rld. Co. v. *Rld. Commr's,* 16 Am. & Eng. Railroad Cases, 15.
Schaezlein v. *Cabaniss,* 67 Pac., 755 (Calif.).
Tillman v. *Cocke,* 9 Baxter (Tenn.), 429, 431.
City of Zanesville v. *Zanesville Tel., etc., Co.,* 59 N. E., 109.
Hubbard v. *Hubbard,* 58 Atl., 969.

To prescribe the rule to decide cases is a legislative act.

Lewis v. *Webb,* 3 Me., 326, 333 and 335.
Osborn v. *Bank U. S.,* 9 Wheat., 738, 819.
Bates v. *Kimball,* 2 Gillman's Vt. Rep., 88.
Hubbard v. *Hubbard,* 58 Atl., 969.

While it is true that under a recent amendment to the English statute, made since passage of the Interstate Commerce Law, the English courts are not now authorized to re-examine a question of fact such as one of "undue preference," as determined by the English Railway Commission, yet they may still examine the decision of the commission and their report and draw inferences from facts found to ascertain

whether the commission gave due weight to matters which should have been considered, and thus determine whether the commission erred in their decision. Our courts must go farther and determine even questions of fact for themselves.

Under the Act of Congress the "findings of fact" made by the commission are merely *prima facie* evidence of the matters stated in the report, and the court in examining into the question must consider all of the evidence introduced, giving *prima facie* effect only to the findings of the commission.

Int. Com. Com. v. *Alabama Midland Ry. Co.*, 168 U. S., 174, 175 and 176.

But if it be true that the question of undue preference is usually one of fact, depending upon the facts and circumstances of the particular case, then it is manifest that neither the commission nor the courts can determine whether one shipper or kind of traffic is subjected to an unjust disadvantage as compared with another shipper or kind of traffic until such a particular case arises and is presented for determination and the facts are ascertained. This can only be done when the shipments have in fact been made.

In *Texas & Pacific Rly. Co.* v. *Int. Com. Com.*, 162 U. S., 197, it was said on page 220:

"The third section forbids any undue or unjust preference or advantage in favor of any person, company, firm, corporation, or locality, and as there is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable, such questions are questions not of law, but of fact. The mere circumstance that there is in a given case a preference or an advantage does not, of itself, show that such prefer-

ence or advantage is undue or unreasonable, within the meaning of the act. *Hence it follows that, before the commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts;* and here again we think it is evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the commission in forming its judgment whether such preference or advantage is undue or unreasonable."

For that reason, if for no other, therefore, neither the commission nor the court can assume in advance that the carrier *will* exercise a right so as to subject one shipper to an "unreasonable disadvantage" as compared with another and to the detriment of the former. It cannot, for example, condemn the routing provision in the joint tariffs merely because the carrier might hereafter in some particular isolated instance so exercise the right as to give one shipper an undue preference over another and to the detriment of the latter. When such a case arises the court will be able to determine it and deal with it intelligently. The argument of a possible misuse of a right or power was also urged by the commission as a reason for holding that party-rate tickets were in violation of this law, as they might be utilized by the carrier for the purpose of unjustly discriminating. But that argument urged by them in the case of *Int. Com. Com.* v. *Baltimore & Ohio R. R. Co.*, 145 U. S., 263, was disposed of by this court on page 284, in the following intelligent manner:

"It is possible to conceive that party-rate tickets may, by a reduction of the number for whom they may be issued, be made the pretext for evading the law, and

for the purpose of cutting rates, but should such be the case, the courts would have no difficulty in discovering the purpose for which they were issued, and applying the proper remedy."

In other words, when a case arises the court will deal with it. It would not assume, however, in advance that the right of the railroad company to issue party-rate tickets would be so used as to violate the law.

Indeed, the commission, when composed of such able men as Cooley, Schoonmaker, Walker, Bragg and Morrison, said, in the case of *Holbrook* v. *St. Paul, M. & M. Co.*, 1 Int. Com. Rep., 325:

"As the facts did not show any violation of the law occurring since the Act was passed under which the commission is acting, but only a fear that there might be such a violation, the commission might, with entire propriety, have advised the parties that they should wait until it was seen whether their fears of misconduct on the part of the defendant were to be realized; *the commission having no authority to anticipate violations of law, or to issue mandatory process upon suppositions or fears that any such violations will take place.*"

It is well settled that a court of equity cannot grant an injunction to allay the fears and apprehensions of individuals. It must be shown not only that the alleged forbidden acts are threatened, but will in all probability be committed to the injury of complainant. A mere threat or an act which may upon some contingency or at some remote time prove a nuisance would not warrant the interference of the court. The injury must not be contingent merely, and apprehension on the part of complainant of a possible or speculative harm will not be enough.

See 16 Am. & Eng. Enc. of Law (2d Ed.), 361.
Bisp. Eq. (3d Ed.), p. 492.
1 High Inj. (3d Ed.), Sec. 886.

But until there was *something done in violation of that law* the power or jurisdiction of the commission did not arise.

IX.

THE ORDER OF THE COMMISSION IS TOO BROAD TO BE SUPPORTED UPON THE GROUND THAT AN UNDUE PREFERENCE MIGHT BE MADE BY THE CARRIER. THE ORDER IS NOT RESPONSIVE TO ANY FINDING OR CASE OF UNDUE PREFERENCE STATED IN THE REPORT.

The order is not confined in its operation to cases in which the initial carrier might be guilty of giving an undue preference under the law, but forbids the carrier from exercising the right to route in any case whatever, where through joint rates are made. The carrier should be at liberty to remove the unlawful preference in a particular case complained of in any other way.

Thus in the case of *Detroit, G. H. & M. Ry. Co.* v. *Int. Com. Com.*, 74 Fed., 803, the commission made an order which though founded upon an unlawful preference between two different localities absolutely prohibited the discriminating charge and the Circuit Court of Appeals held the order erroneous because not allowing the carrier any liberty to remove the unlawful preference in any other way. On page 840 and 841 the court said:

"From what has been already ruled, it is apparent that even if the commission had established by its inquiry, an abuse to be remedied, the order it gave was not a proper one and should not be enforced. Large as its powers may be and plenary as may the authority

of the court to enforce by mandatory injunctions or otherwise, obedience to its orders, its powers are those of regulation and not construction or reconstruction. *Interstate Commerce Commission* v. *Baltimore & O. R. R. Co.*, 43 Fed., 37, 50; and 145 U. S., 263, 12 Sup. Ct., 844. And now see *Cincinnati, N. O. & T. P. Ry. Co.* v. *Interstate Commerce Commission* (Oct. 1895), 16 Sup. Ct., 700. That is, as the commission has made it, a dispute about discriminating rates, and the easy remedy on such a complaint, is a re-adjustment of the rates to cover the discrepancy. As was said in one of the cases we have cited, the method of redress by readjusting the rates must always be left to the choice of the company, at least in the first instance; and in the subsequent St. Louis case, *supra*, the commission adopted that course, and made the proper order. *Here was an arbitrary and peremptory order to abandon the accessorial cartage at Grand Rapids, without regard to any rates, or without option as to readjustment of them, the defendant company not even being allowed the alternative of establishing a like service at Ionia.* It is, in its nature, not a regulation of commerce, as much as an interference with the rights of property and its use, which possibly even Congress could not in this way prohibit. At all events, it is an attempted exercise of a legislative power which Congress has not, we think, conferred upon the commission."

Concerning a claim that a certain charge had been found inherently unreasonable by the report of the commission, the Supreme Court said, in *East Tenn., etc., Rly. Co.* v. *Interstate Com. Com.*, 181 U. S., 1, on p. 23:

"As the Circuit Court only affirmed the order of the commission which directed the carriers to desist from charging a greater compensation for the shorter haul to Chattanooga than for the longer haul to Nashville, there is no room for the conclusion that it found affirmatively that independently of the charge to Nashville the rate to Chattanooga was *per se* unreasonable. For, of course, a decree which ordered the carriers to

desist from charging a greater compensation for the lesser than for the longer haud, would be *in no way responsive to the conclusion* that the rate for the lesser distance was unreasonable in and of itself."

On page 26, in the same case, it is said:

"The decree which was entered, however, did not declare the rates charged to Chattanooga to be unreasonable, but simply affirmed the order of the commission directing that no greater sum be charged for the carriage of freight to Chattanooga, the shorter, than was exacted to Nashville, the longer, distance. As we have already shown, such a decree is not *responsive to the conclusion* that the rates to Chattanooga were in and of themselves unreasonable, since the right to continue to exact them was sanctioned, provided the traffic to Nashville was either abandoned or the rate to Chattanooga made the same as to Nashville."

The order, however, is not directed to cases or instances of undue preference, but in all cases forbids the initial carrier to route otherwise than as directed by the shipper. It is not responsive to a finding or conclusion of undue preference.

X.

NEITHER ARE THE INITIAL CARRIERS AFFORDED AN UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE.

If, on the other hand, the commission intended to say, as they probably did, that the shippers of citrus fruit traffic were subjected to an unjust and unreasonable prejudice upon the ground possibly that the routing provision gave the initial carriers an undue or unreasonable advantage, then the argument heretofore made still applies to the disposition of such question. The carriers are not in competition with the shippers.

A carrier may lawfully obtain an advantage by offering or affording the shipper a consideration, that is, by doing something which the carrier is not obliged under the law to do. It is true that in England the carriers, by their peculiar methods of doing business, sometimes come in competition with the public. It is in those respects only in which they do not act as carriers. In that country they not only collect the goods for transportation, but also make a personal delivery. In these respects they come in competition with draymen, carters, and other collectors and distributors of freight. In some instances it was, therefore, held that they could not adopt rules in respect to the collection of freight which would shut out other collectors of freight, thereby giving themselves in that respect an unjust advantage over others who were competing with them in business of the same character. Such cases cannot arise in this country, as the business of common carriers is not conducted in that respect as in England, if indeed those decisions would be followed here, which may well be doubted. There is nothing objectionable, however, in a common carrier acquiring an advantage over the shipper, especially where a consideration is afforded to the shipper therefor. Such a consideration is afforded wherever the carrier undertakes to do for, or to give to, the shipper something which it cannot be compelled to do, give or furnish under the law. The initial carriers make joint through rates and offer them to the shipper upon condition that such carrier shall route over connecting lines. As they are not obliged to make such rates or enter into such arrangements, when they do so upon the condition stated, they afford the shippers a consideration for a waiver

of the supposed right of routing. The case is identical with that in which a carrier undertakes by its tariffs and uniform bills of lading issued thereunder to carry for shippers who ship under a bill of lading releasing the carrier from certain liabilities at a lower rate than is accorded to those shippers who insist upon shipping at the carrier's risk.

See *Manheim Insurance Co.* v. *Erie W. Transportation Company,* 75 N. W., 602.

Now, where goods are shipped under a bill of lading limiting the carrier's liability, certainly the carrier obtains an advantage. The advantage, however, is not unjust, because in the first place the shipper receives a *quid pro quo;* and, in the next place, the carrier is not in competition with the shipper and the shipper is, therefore, not in a position to claim to be injuriously affected by reason thereof. The shipper cannot secure the advantage of this arrangement which the law does not accord him, and at the same time reject any disadvantage incident to such an arrangement. It is not such an advantage or disadvantage as is within the contemplation of this law.

Indeed, it has been held that in determining the question even of undue preference in favor of one shipper to the unjust disadvantage of another shipper, the courts must take into consideration the fair interests of the railway company itself, and in any controversy which may arise under this law such interests cannot be ignored.

See

Ransome v. *Eastern Counties Ry. Co.,* 1 Nev.

& MacN. (Railway and Canal Traffic Cases), 63; s. c., 1 C. B. (N. S.), 437.

Oxlade v. *Northeastern Ry. Co.*, 1 Nev. & MacN. (Railway and Canal Traffic Cases), 72.

Nicholson v. *Great Western Ry. Co.*, 1 Nev. & MacN. (Railway and Canal Traffic Cases), 121; s. c., 5 C. B. (N. S.), 366.

Harris v. *Cockermouth & Workington Ry. Co.*, 1 Nev. & MacN. (Railway and Canal Traffic Cases), 97 and 104.

In *Ilwaco Ry. and Navigation Co.* v. *The Oregon, etc., Ry. Co.*, 57 Fed., 673, it is said on page 676:

"For a carrier to prefer itself in its own proper business is not the discrimination which is condemned."

Thus, in *Little Rock, etc.*, v. *Eastern Tenn., etc.*, 47 Fed., 771, it is said (page 775):

"It cannot be either an undue or unreasonable discrimination against the plaintiff to afford for passengers superior facilities, such as through tickets, shorter rates, or the like, over its own road, in preference to that of its rival, running a road part of the way in the same direction. For illustration, if a passenger wishing to go from Texarkana or further on from some point in Texas to Memphis or beyond desires to travel over the Iron Mountain road, why should it not take him all the way to Memphis, and deliver him to the East Tennessee and Georgia, or some other road wishing to take him on easy terms as to rates, through tickets, and the like, rather than shunt him at Little Rock, upon the plaintiff's road? It cannot be an unfair or an unreasonable discrimination against the plaintiff for the Iron Mountain to keep him on its own road by offering him superior facilities in the respects mentioned. * * * It would be free of such imputation because it has a line of its own covering the same

distance, and may prefer itself to others, as we all do in obedience to human nature."

That is to say, the Santa Fe Companies are perfectly justified in insisting that through business received by them in Southern California destined to Chicago, for example, shall go over their rails the entire distance instead of being dropped at Pueblo, Burton, Kansas City, or other intermediate points, and transferred over some connecting line which might only be able to take away the traffic and secure the business by offering or giving unlawful rebates. When the Santa Fe thus prefers itself to others it is free from the imputation of unreasonable discrimination. It is justified in increasing by all means not prohibited its own traffic or getting as much traffic as possible for its own line. It risks its capital for legitimate business returns or profits.

XI.

THE ORDER IN QUESTION IS UNLAWFUL BECAUSE LEGISLATIVE IN ITS NATURE, IS NOT CONFINED IN FAVOR OF THE COMPLAINANTS NOR TO THE CASE BEFORE THE COMMISSION, BUT IS INTENDED GENERALLY TO CONTROL THE CONDUCT OF THE CARRIERS IN ALL FUTURE CASES AND CONTROVERSIES AND IS SUCH AN ORDER AS THE COMMISSION HAS NO AUTHORITY TO MAKE.

The order in question is not confined to the complainants before the commission, nor in its operation to the particular joint tariffs under consideration by the commission. It operates upon the initial carriers in respect to future agreements for joint rates or

tariffs. It operates in favor of every shipper of citrus fruit who specifies a desire to route, and compels the carrier in all future cases which may arise to transport at the joint through rate, at the same time abrogating the essential provision or condition upon which such joint rate is based, and permitting the shipper to route as he may please.

The commission has undertaken to pass on cases of parties not before the court and the decision made would have no mutual binding effect as between the railway company and such parties. The complainants before the commission, by their own conduct were not entitled to relief, and a court of justice would not have granted them relief in the premises, yet by this indirect and unauthorized way they are given the benefit of an order which no court would think of making in their favor.

In *Post* v. *Southern Ry. Co.*, 52 S. W., on page 309, the court refused complainants relief because they had utilized their privilege of routing for the purpose of obtaining rebates, and the court said they did not come into court with a clear right and with clean hands to ask relief which was so extraordinary . On page 310 it is said:

"The effort then resolves itself into one by which eastern consignees seek to create a monopoly in the carriage of cotton by the Star Union Line wherever it enters or passes through its territory, and this because of some undisclosed secret arrangement by which either consignees or shippers obtain rebates and concessions not enjoyed by other freight or railroad lines. *The courts cannot be used to carry such an arrangement into effect. It is true, other reasons are assigned why this fast freight line is preferred, but they are*

to a considerable extent specious, and the fact remains that the rebate or concession is an important, if not controlling feature."

The lower court seemed to think that because the commission itself appeared as plaintiff to have its own order enforced in court therefore it became immaterial whether or not the complainants before the commission had acted so unconscionably as to be barred of relief in the nature of the order promulgated, the court stating that the commission was now acting on behalf of the public.

Section 16 provides that a petition to the court asking enforcement of a lawful order or requirement of the commission may be filed either by the commission or "and company or person interested in such order or requirement". It was not thought that the order could be made broader, nor that it became more sacred because the commission might appear in court to champion it than if the complainants before the commission appeared for that purpose.

The making of such a general order and the application of the commission to have it enforced should such a conclusion be reached would deprive the defendants of a very essential defense which was made before the commission and which they should be permitted to make in court,—namely, that the complainants before the commission sought relief with unclean hands and sought to use the commission as an intermediary to secure to them opportunities for continued violations of this law. Unless such equitable defense be available, why should it have been provided in section 16 that the court shall proceed to hear and determine the matter "speedily as a court of equity" but

without formal pleadings applicable to ordinary suits, "but in such manner as to do justice in the premises."

If complainants were not entitled to relief by reason of their inequitable and unclean practices, can the commission by this shift of positions hold up the defendants to be further raided by these law breakers?

The commission has simply enacted a rule of conduct to be enforced against the carriers by the mandatory injunction of the federal court. It is as broad as a legislative enactment, and as general and imperious as a decree of a Roman emperor. The court is called upon to enjoin the defendants to obey a rule of the commission which the commission conceived to be the law, and the rights of the carriers in cases which may hereafter arise are thus prejudged and predetermined. They are cut off from testing their rights in any cases which may hereafter arise, and the rights of the respective parties are not determined in an orderly proceeding after a particular case has arisen, but will be determined only by summary proceedings in contempt. Such a course has not yet been authorized by the statute.

Southern Pacific Co. v. *Colorado Fuel & Iron Co.*, 101 Fed. 785.

Authority for making such a general order cannot be found in any language in the Interstate Commerce Statute. It is true the commission may make certain administrative orders or regulations applicable to all carriers in regard to form of schedules, publication of tariffs, making reports, and several other matters specifically prescribed. In the enactment of this law it must be remembered that the Cullom Bill in the Senate

alone provided for the creation of a commission. The House was opposed to any commission to enforce the law, but as it was suggested shippers were not obliged to go before the commission but might go into court, and that the object of the commission was merely to secure evidence for the shipper or an easy method of proving cases for the recovery of damages arising out of violations of the law, the House acceded to such provisions in the Senate Bill.

Section nine, therefore, provided that any person who claimed to have been damaged might either bring an action in a Circuit or District Court of the United States or file a petition before the commission to have his damages ascertained. It was, no doubt, supposed that the commission would make some order in such a case which might be enforced under section sixteen as originally passed, and when it was afterwards discovered that if the claim exceeded twenty dollars the defendant would be entitled to a trial by a jury under the Constitution, section sixteen was amended, in 1889, so as to in terms cover an order made by the commission requiring the defendant to make reparation in damages.

Section sixteen, outside of the amendment thereto made in 1889, specifically authorizing the enforcement after a jury trial of an order for reparation in damages, does not pretend to define a lawful order or the authority of the commission to make general orders and such authority must therefore be pointed out in some other section or provision. It is not to be assumed it was intended to permit the commission to formulate after a hearing orders of such a general nature as a court would not be authorized itself to

make. The practice indulged in is so unusual and anomolous as to justify the inference that no such power was intended to be conferred. Courts cannot lawfully assume or presume secret purposes that are not indicated or expressed by the language or terms of the statute itself and then enact provisions to accomplish these supposed intentions.

Section thirteen generally authorizes petitions by persons and associations or societies, etc., to be made before the commission, claiming alleged violations of the provisions of this law by a common carrier, or the commission may, on its own motion, investigate in respect to violations of this law. Complaints may be made by parties who have no legal interest or right to relief.

Under section fourteen it is to make a report of the result of such investigation, and these reports may be published by the commission for public information. This section also seems to be a section on evidence, to the effect that findings of fact in such report shall be *prima facie* evidence of such facts in subsequent judicial proceedings.

Section fifteen provides that if it appear in any investigation that anything has been done or omitted to be done in violation of that statute by any common carrier, or that any injury has been sustained by any party complaining, it shall be the duty of the commission to cause a copy of the report in respect thereto to be delivered to the common carrier, together with a "*notice*" to such carrier "*to cease and desist*" from such violation and make reparation for the injury done, within a given time, and if the carrier shall com-

ply with such notice or warning it "shall thereupon be relieved from any further liability or penalty for such particular violation of law."

Now this is evidently the section under which the commission assumed to act in making its order, but it must be admitted that there is a vast difference between a requirement *to give* "*notice*" and authority to make an order of a legislative nature which may be enforced by injunction in the courts. The alleged order of the commission is that defendants "are hereby *notified* and required to wholly *cease and desist,*" etc., after a fixed date, etc., concluding that "notice" be sent to defendants "under the provisions of the fifteenth section" (Rec., 84 and 113), thus showing the commission supposed its power rested on that section.

The manifest purpose of this section is to afford the carrier an opportunity for immunity for anything done contrary to that law, and by complying with the notice or recommendation of the commission it is afforded an opportunity to repent and thus be freed from penalties which would otherwise attach.

The act in question was considered at the time as largely experimental, and one of the great purposes was to afford publicity, it being supposed that this would have a beneficial effect upon the carriers. The purpose of such investigations also was to obtain information for future legislation, as the commission is required to report to Congress. (See section 21.)

The order in question is not judicial because it is not confined to the case made by the pleadings before the commission, nor to the parties, as it is broader and is made to inure in favor of the public generally. It

is legislative in its nature. It is not an administrative order or regulation, such as is made by the executive department as to mere matters of detail regulating the mode of proceeding to carry into effect the law, where the statute gives such specific power to make regulations which of course must apply generally to all alike. (*Morrill* v. *Jones*, 106 U. S., 466.) The statute in question enumerates certain particulars wherein the commission may make purely administrative orders or regulations, as stated heretofore, such as in respect to the form of tariffs, publication of joint tariffs and the relaxation of section four and requiring railways to make reports or returns in respect to various matters. One object of the law was to secure publicity, which it was well supposed would cure or do away with many abuses. No language which can be pointed out in the act gives the commission the power to make a general order of the nature of that made in this case. This statute does not invest the commission with legislative power.

Interstate Com. Com. v. *C. N. O. & T. P. Ry. Co.*, 76 Fed., 184.

Farmers L. & T. Co. v. *Nor. Pac. Ry. Co.*, 83 Fed., 268.

In *Interstate Com. Com.* v. *Railway Co.*, 167 U. S., 479, on page 501, it is said:

"The power given is the power to execute and enforce, *not to legislate*. The power given *is partly judicial*, partly executive, and administrative, but not *legislative*."

See, also,

Int. Com. Com. v. *Alabama R. R. Co.*, 168 U. S., 161, 162.

In *Texas and Pacific Ry. Co.* v. *Interstate Com. Com.*, 162 U. S., 216, it was even then doubted whether the commission had the power to make such general orders, and it was said:

"Congress had not seen fit to grant legislative powers to the commission."

On page 220 it is said:

"Hence it follows that before the commission can adjudge a common carrier to have acted unlawfully, it must ascertain the *facts;* and here again we think it evident that those facts and matter which carriers, apart from any question arising under the statute would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the commission in forming its judgment whether such preference or advantage is undue or unreasonable."

Facts concern an existing or past state of events. Surmises and conjectures concern the future. The facts concerning a given case or transaction can never be known until the thing has occurred, and the transaction has taken place.

In Cooley's Constitutional Limitations (6th ed.), pages 108 and 109, it is stated:

"And it is said that that which distinguishes a judicial from a legislative act is that the one is a determination of what the existing law is in relation to some existing thing *already done or happened*, while the other is a predetermination of what the law shall be for the regulation of all future cases falling under its provisions."

Further on he says:

"It is the province of judges to determine what is the law upon existing cases. In fine, the law is *applied* by the one and *made* by the other. To do the first, therefore,—to compare the claims of parties with the

law of the land before established—is in its nature a judicial act. But to do the last—to place new rules for the regulation of new controversies—is in its nature a legislative act; and if these rules interfere with the past or the present, and do not look wholly to the future, they violate the definition of a law as 'a rule of civil conduct'; because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated."

In 2 Chitty's Blackstone, Book 3, star page 25, it is said:

"In every court there must be at least three constituent parts,—the *actor, reus,* and *judex;* the *actor* or plaintiff, who complains of an injury *done;* the *reus,* or defendant, who is called upon to make satisfaction for it; and the *judex,* or judicial power, which is to examine the truth of the facts, to determine the law arising upon that fact, and *if any injury appears to have been done,* to ascertain, and, by its officers, to supply the remedy."

In *Merrill* v. *Sheburne,* 1 N. H., 199; s. c., 7 Am. Dec., 52, Woodbury, Judge, said:

"On general principles, therefore, those inquiries, deliberations, orders and decrees, which are peculiar to such a department, must, in their nature, be judicial acts. Nor can they be both judicial and legislative, because a marked difference exists between the employments of judicial and legislative tribunals. The former decide upon the legality of claims and conducts; the latter make rules upon which, in connection with the Constitution, those decisions should be founded. It is the province of judges to determine what is the law upon existing cases. * * * In fine the law is applied by the one and made by the other. To do the first, therefore, to compare the claims of parties with the laws of the land before established, is, in its nature, a judicial act.

But to do the last, to pass new rules for the regulation of new controversies, is in its nature a legislative act; and if those rules interfere with the past or the

present and do not look wholly to the future, they violate the definition of a law 'as a rule of civil conduct.' I. Bl. Com., 44. Because no rule of conduct can, with consistency, operate upon what occurred before the rule itself was promulgated.

It is the province of the judicial power also to decide disputes 'between or concerning persons,' but of legislative power to regulate public concerns, and to 'make laws' for the benefit and welfare of the state."

Therefore, in determining that the commission was not invested with the legislative power of making a schedule of rates which should control the carriers in respect to their charges for services to be rendered in the future, the Supreme Court very properly stated, in *Int. Com. Com.* v. *Railway Company*, 167 U. S., on page 493:

"The reasonableness of the rate, in a given case, depends on the *facts*, and the function of the commission is to consider these facts and give them their proper weight. If the commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the commission to be reasonable."

On page 499 it is said:

"It is one thing to inquire whether the rates which *have been charged and collected are reasonable*—that is, a judicial act; but an entirely different thing to prescribe rates which *shall be charged in the future*—that is a legislative act."

In consonance with the above rule, it is, therefore, held that a court of equity cannot declare future rights, but must leave them to be determined when they come into possession.

In *Cross* v. *De Valle*, 1 Wall., pp. 14 and 15, it is said:

"A chancellor will not maintain a bill merely to

declare future rights. The Scotch tribunals pass on such questions by 'declarator,' but the English courts have never assumed such power. In *Langdale* v. *Briggs*, Lord Justice Turner remarks: 'As long as I have known this court, now for no inconsiderable period, I have always considered it to be settled that the court does not declare future rights, but leaves them to be determined when they may come into possession. In all cases within my experience, where there have been tenancies for life with remainders over, the course has been to provide for the interests of the tenant for life, reserving liberty to apply upon their death.''

As an exercise of judicial power the order is too broad and sweeping, not confined in its effect to the parties to the proceedings or the issues; it lacks mutuality as a decision in that other shippers are benefited and the order inures in their favor, though in no sense precluding them should they wish to institute original proceedings in court under Sec. 9, which requires them to elect.

Teamster v. *Blackstock*, 83 Va., 232; s. c., 5 Am. St. Rep., 262.

Reynolds v. *Stockton*, 43 N. J. Eq., 211; s. c., affirmed in 140 U. S., 266 to 269.

Windsor v. *McVeigh*, 93 U. S., 283.

1 Freeman on Judgments (4th ed.), Sec. 120.

What was generally understood to be the scope of this law at the time of its passage is well illustrated in a case decided by the Supreme Court of Oregon, November 5, 1888. In *Board of Railroad Commissioners of Oregon* v. *Oregon Railway and Navigation Co.*, 19 Pac., 702, a statute of that state couched in language similar to that of the Interstate Commerce Law, par-

ticularly sections 13, 14, 15 and 16, was under consideration. It was held that it would not be presumed that the act intended to give the board authority to adjust matters investigated or to make an order requiring the railway company to refund to a shipper a sum of money alleged to have been exacted from him in excess of a reasonable charge for the shipment.

On page 705 it is said, referring to the sections authorizing the commission to hear and investigate complaints:

"Said sections endow the Board of Commissioners created by the act with ample power to investigate the subjects. This was obviously done in order to enable the legislature to judge as to whether the railroad management was such as was calculated to conserve the best interests of the public; whether the public were being dealt fairly with by those in charge of such management, and whether changes could not be made which would be beneficial to the community. The state has an interest in such matters, and it is highly proper that the legislature should inquire into them; and should it ascertain that the railroad companies were pursuing a selfish, mercenary course, and disregarding the rights of their patrons, it could provide suitable regulations to remedy the mischief."

On pages 704 and 706 are set out certain provisions of that act showing a similarity with the Interstate Commerce Law.

On pages 706 and 707 it is said:

"The first question arising would be, what contentions between the railway company and such persons, firms, etc., has it jurisdiction of? The answer to that question cannot be left to speculation. The jurisdiction of such commissions is not given by implication. Commissions of that character are mere creatures of the statute, and possess no power except what the statute

expressly confers upon them. * * * While it might be inferred from sections 12, 13 and 14 that its object was to constitute the board a kind of tribunal of conciliation to adjust the claims of persons against the railroad companies and to establish *prima facie* evidence of their validity. And section 15 makes a very lame attempt to compel satisfaction of them. What kind of claims it was intended the board should adjust and require to be satisfied does not appear. If its jurisdiction, however, in that particular is co-extensive with its authority to investigate such affairs, it must necessarily extend to claims arising out of torts as well as contracts; as it is required by section 18 of the act to investigate the cause of any accident on any railroad resulting in the loss of life and of any accident not so resulting which it may deem to require investigation. * * * It will not be contended that the act gives the board jurisdiction in express terms to determine when freight charges are unreasonable; and if the question is left to inference there is no limit to the extent of its jurisdiction except the limitation of its authority to investigate, and that seems to extend to all the affairs between the railroad corporations and individuals or associations, and to involve every breach of duty of the former and the consequences attending it.

It has for a very long time been considered the safer and better rule, in determining the question of jurisdiction of boards and officers exercising powers delegated to them by the legislature, to hold that their authority must affirmatively appear from the commission under which they claim to act. *There is too strong a desire in the human heart to exercise authority and too much of a disposition upon the part of those intrusted with it to extend it beyond the design for which and the scope within which it was intended it should be exercised, to leave the question of its extent to inference.* Should it be so left serious disturbances might arise, involving a conflict of jurisdiction, which would be highly detrimental to the community. It is not, it seems to me, requiring too much of the *leg-*

islative branch of the Government to exact, when it creates a commission and clothes it with important functions, that it *shall define and specify the authority given it so clearly that no doubt can reasonably arise in the mind of the public as to its extent.*"

So under a New York statute creating a board of railroad commissioners, and authorizing it to investigate and give notice to the railroad companies of certain things, it was held in *People* v. *N. Y. L. E. & W. R. Co.*, 104 N. Y., 58, 66 and 67; 9 N. E., 856, cited and approved in *N. P. R. R. Co.* v. *Dustin*, 142 U. S., 503, that this amounted to nothing more than an inquest for information and had no effect beyond the advice to the railroad company and suggestion to the legislature for additional legislation.

A similar decision was made in *State ex rel. Attorney General* v. *Mo. Pac. Ry. Co.*, 55 Kas., 708; s. c., 41 Pac., 964.

In Lewis' Sutherland on Statutory Construction (2nd ed.), section 562, it is said:

"Power is generally given to some officer to do acts for the enforcement of such duties; then two principles concur to require strict construction; the second is that which applies to all statutory powers. They are strictly construed."

In Sec. 564 it is said:

"Where special powers are conferred on a court either of otherwise general or limited jurisdiction it is rigorously restricted to those granted, and the grant itself is strictly construed; the jurisdictional facts must appear on the face of the proceedings. The court can take no additional power from its general jurisdiction. In the exercise of such special powers it is precisely limited to those plainly delegated. *Nothing is to be presumed which is not expressly given.*"

See, also, Secs. 565, 567 and 568.

As the commission under section thirteen is authorized to entertain complaints of associations or municipalities which have no legal interest or right to relief, and may also investigate on its own motion, and in all such investigations it is provided that the findings of fact of the commission shall be *prima facie* evidence in subsequent judicial proceedings, it is quite obvious that the commission in this respect is created by the legislature an agency to ascertain the facts, which ascertainment may be used as evidence in subsequent but appropriate judicial proceedings. It is a statute in that respect on the subject of evidence. That which was intended to operate merely as a rule of evidence in subsequent litigation was hardly intended to afford power to make or fix a rule of law as prescribing a measure of duty. Was it intended to put it in the power of the commission to make a general order against one road, thus prescribing and fixing its duty to the public under certain circumstances and omit to affect other roads though the circumstances might be similar? Would not that make possible the worst form of special legislation? Was it intended to invest this administrative board with such great opportunities for favoritism or oppression? (*Mayor, etc., of Baltimore* v. *Radecke*, 49 Md., 230 and 231.)

XII.

MARKED DIFFERENCE BETWEEN THE ENGLISH STATUTES AND THE INTERSTATE COMMERCE LAW IN RESPECT TO GENERAL ORDERS OR INHIBITIONS.

In marked contrast with the omission of this statute to confer power upon the commission to make an order such as the one involved in this case, is the provision of section three of the English Railway and Canal Traffic Act of July 10, 1854, set forth on page 2, 1 Nev. and MacN. (Railway and Canal Traffic Cases.) That section authorized any company or person complaining against any railway company of anything done or of any omission made in violation or contravention of that act, to apply in a summary way to the Court of Common Pleas or a judge thereof. That court was authorized to hear the complaint against the railway company, and if it appeared to the court that anything had been done, or any omission made in violation or contravention of the act, it was then provided,—"it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this act, and enjoining obedience to the same." Here, specific power was given to enjoin a further continuing violation of the act, but the order in any event was confined to the parties in court. The court did not feel competent to prejudge and determine rights of parties not before it or adjudge cases not involved.

The duties imposed upon that court by certain pro-

visions of that act, as in the determination of questions of undue preference, no statute defining that term, were regarded by the judges as not judicial, but the judges of the Common Pleas Court voluntarily undertook to exercise the jurisdiction conferred.

See 1 Hodges on Railways (7th Ed.), by J. M. Lely, Note (a), p. 471.

In the subsequent Act of July 21, 1873, this jurisdiction was transferred to the railway commissioners. In Section 6 of that act, found on page 6, 1 Nev. & MacN. (Railway and Canal Traffic Cases), a similar complaint as authorized under the Railway and Canal Traffic Act might be made to the railway commission, and it was provided:

"And for the purpose of enabling the commissioners to hear and determine the matter of any such complaint, they shall have and may exercise all the jurisdiction conferred by section three of the Railway and Canal Traffic Act, 1854, on the several courts and judges empowered to hear and determine complaints under that act; *and may make orders of like nature with the writs and orders authorized to be issued and made by the said courts and judges;* and the said courts and judges shall except for the purpose of enforcing any decision or *order* of the commissioners, cease to exercise the jurisdiction conferred upon them by that section."

Under Section 26 of the same act, on page 12, 1 Nev. & MacN. (Railway and Canal Traffic Cases), it is provided:

"*Any decision or any order made by the commissioners for the purpose of carrying into effect any of the provisions of this act may be made a rule or order of any superior court,* and shall be enforced either in the manner directed by section three of the Railway

and Canal Traffic Act, 1854, as to the writs and orders therein mentioned, or in like manner as any rule or order of such court."

In Section 29 of the same act, found on the same page, the commissioners were authorized to make certain general orders.

The power of the Railway and Canal Commission was further increased by the act of August 10, 1888. See 6 Railway and Canal Traffic Cases, p. XVIII, *et seq.*

The latter statute, of course, was not before Congress at the time of the passage of the original Interstate Commerce Law, but it is obvious that with this early English legislation before it (and in part adopted) Congress did not intend to confer similar or as great power upon the Interstate Commerce Commission as was conferred upon the Common Pleas Court, or the Railway and Canal Commission, or it would have done so by making similar provisions in unequivocal terms. Such extraordinary power should be found in the plain letters of the statute, if intended to be conferred.

XIII.

THE JURISDICTION OF THE FEDERAL COURTS IS ONLY TO DETERMINE THE LAWFULNESS OF THE ORDER IN QUESTION, AND IF LAWFUL TO ENFORCE OBEDIENCE TO THE SAME, OTHERWISE TO DISMISS THE BILL. THEY HAVE NO POWER TO MAKE ANOTHER OR DIFFERENT ORDER OR MODIFY THE ONE MADE.

This is self-evident from Section 16 of the statute. The lawfulness of the order of the commission is made

the subject matter for judicial investigation and determination in the courts, and if it be made to appear to the court on the hearing that the lawful order or requirement of the commission drawn in question has been violated or disobeyed by the defendant it shall be lawful for the court to issue a writ of injunction to restrain such common carrier from further continuing such a violation or disobedience of such lawful order or requirement of the commission.

The jurisdiction is special, and the court has no power to make a different order, and if the order as made requires modification it is quite evident that it is not a lawful order, and therefore not enforceable. The order must stand as made or fall entirely.

See

Int. Com. Com. v. *L. & N. R. R. Co.*, 73 Fed., 409.

Int. Com. Com. v. *D. L. & W. R. R. Co.*, 74 Fed., 723.

D. G. H. & M. R. R. v. *Int. Com. Com.*, 74 Fed., 803, 841.

Farmers' L. & T. Co. v. *N. P. Co.*, 83 Fed., 249.

Int. Com. Com. v. *Western New York, etc., Co.*, 82 Fed., 192.

XIV.

THE ORDER OF THE COMMISSION WAS INVALID BECAUSE THE CONNECTING CARRIERS WERE NOT MADE PARTIES TO THE PROCEEDINGS BEFORE THE COMMISSION AND THE COMMISSION HAD NO POWER TO ADJUDICATE THE PROVISION IN THE JOINT TARIFF AGREEMENT TO BE INVALID WITHOUT HAVING BEFORE IT THE CONNECTING CARRIERS WHO WERE PARTIES TO THAT AGREEMENT AND GIVING THEM AN OPPORTUNITY TO BE HEARD THEREON. A COURT OF EQUITY COULD NOT ENTERTAIN JURISDICTION IN SUCH A CONTINGENCY, NEITHER COULD THE COMMISSION MAKE AN ADJUDICATION OR ORDER DECLARING INVALID THE JOINT TARIFF AGREEMENT AND THUS AFFECTING RIGHTS OF PARTIES WHO WERE NOT BEFORE THE COMMISSION.

The above proposition would seem to be self-evident. If, as suggested by the lower court, the routing provision was agreed upon for the purpose of effectuating a division of the traffic among connecting carriers claimed to be unlawful, it would evidently appear that such connecting carriers were vitally interested in such question and would be affected by the decision and order of the commission, especially when made conclusive and enforced by decree of court. The order of the commission was of an injunctive nature, essentially modifying the joint agreement between the carriers. If the commission proposed to make an order of an injunctive nature affecting the joint contract between the carriers it certainly would have no more authority to make an adjudication concerning the validity of that contract than would a court of equity

which undertook to adjudge such contract invalid. The connecting carriers were indispensable parties to any such hearing or any such adjudication.

See,

California v. *So. Pac. Co.*, 157 U. S., 229, 249, 251.

U. S. v. *Nor. Pac. R. R. Co.*, 134 Fed., 715 (C. C. A., 8th Circuit).

Minn. v. *Nor. Sec. Co.*, 184 U. S., 199.

Cons. Water Co. v. *City of San Diego*, 93 Fed., 849 and 852.

Western N. Y. R. R. v. *Penn. Refg. Co.*, 137 Fed., 358.

It goes to the very root of the power of a court or any tribunal to make a decree or order which will necessarily affect the rights of parties not before the court. As the connecting carriers would not be bound by the decision of the commission or the lower court, but the initial carriers would be by the decree of the court they would be placed in a precarious position by reason of such a ruling. This objection was raised on demurrer (See Record, pp. 87 and 88), but overruled by the court. (See Record, pp. 1017, 1018 and 1019.)

It is also necessarily involved in the validity of the order of the commission, and the decree of the lower court. As such order was invalid by reason of that defect of parties, the decree of the court was erroneous in enforcing the same. The case relied upon by the lower court of *Int. Com. Com.* v. *T. & P. Ry.*, 52 Fed., 162; affirmed in 162 U. S., 205, is wholly inapplicable, as in that case the connecting carrier interested in the

through rate, only that portion of which received by the other carrier was involved, was made a party to the proceedings before the commission, and the order of the commission involved only the validity of the local rate of the Texas and Pacific Railway Company, the defendant, as compared with the proportion of the through rate received by it. In such question the connecting carrier was not interested, but in any event had been accorded a hearing. The lower court assumed that as defendants were wrongdoers it was immaterial that other participants in the alleged wrongful acts were not made parties to the proceeding. All of which is begging the question. Defendants could not be regarded as wrongdoers if there was no illegal arrangement between competing connecting carriers to which defendants were also parties. Neither commission nor court had the power to adjudicate as illegal and restrain the carrying out of a joint contract without having before it all the parties to such contract, and giving them an opportunity to be heard upon that question. That was essentially the doctrine in *Minn.* v. *Northern Sec. Co., supra, U. S.* v. *Northern Pac. Co. et al., supra,* and *Calif.* v. *So. Pac., supra.* The commission seem to have evolved quite an anomolous body of law and mode of practice in recent years.

Conclusion.

The order of the commission should not be enforced because,—

1. The assumption of the initial carrier of the right to route, and the denial of the same to shippers, is not

anything done or omitted to be done in violation of the Interstate Commerce Law and is therefore a matter over which the Commission has no jurisdiction.

2. The order of the Commission is in part based upon an erroneous conclusion arising from a misconstruction of Section 6 of that statute, and is therefore unlawful.

3. The order of the Commission is in part based upon an erroneous conclusion founded upon a misconstruction of Section 3 of that law and is therefore unlawful.

4. The conclusion of the Commission in respect to any question of undue preference was contrary to the evidence or findings in the case; moreover, there was no specific instance of any undue preference found or pointed out in the report of the commission.

5. The order of the Commission was not even responsive to any conclusion made by the commission on the subject of undue preference. It is not limited in its operation, so as to be applicable to any case of undue preference.

6. The order of the Commission is based upon an erroneous conclusion of the Commission that this business was so routed by the defendants as to carry out a supposed arrangement between connecting carriers not defendants for a division of this traffic. Such conclusion is without support in the evidence or findings of fact in the report. The Commission merely concluded that there was some arrangement not stated between connecting lines not defendants and therefore presumably between all the connecting lines for a division of tonnage. The conclusion was vague, indefinite

and misleading, and showed no violation of the statute.

7. The finding and ruling of the lower court that defendants were violating Section 5 of the statute is contrary to the testimony before the court and such conclusion is wholly unwarranted and unfounded in fact.

8. Neither the order of the Commission nor the decree of the court would be responsive or appropriate to a conclusion or finding of a violation of the pooling clause of the statute by the connecting carriers. It was not limited in its scope or operation to prohibiting any such violation.

9. There is no warrant in law for the contention that the carrier, when it chooses to make rates beyond its own line by joint agreement with connecting carriers, may not select the connecting agency of transportation, particularly when it makes the selection of such agency the condition of and the consideration for its undertaking, to the shipper's advantage, to do what the law does not require and the shipper could not demand.

10. The decision and order of the Commission was invalid because it undertook to adjudicate the validity of a joint agreement with connecting lines and to enjoin the carrying out of the provisions thereof by the initial lines without making the connecting lines parties to the proceeding and without affording them an opportunity to be heard on the question of the invalidity of their agreement before the same was so determined or adjudged by the Commission. As connecting lines would be indispensable parties to any such determination, the conclusion and order of the commission modi-

fying the agreement was unauthorized, unwarranted and contrary to principles of justice.

As it is obvious that the lower court not only misconstrued the 5th section of the Interstate Commerce Law but also misconstrued and misapplied the evidence before it and as all the evidence both before the commission and the court showed that the sole object of the initial carriers was to comply with the Interstate Commerce Law and by the method adopted to prevent or check connecting lines from paying to the shippers unlawful rebates in violation of that law, it would be unjust and inequitable to take from the defendants the only means in their power to force other carriers to obey the provisions of that law.

Any decree which would afford the complainants before the commission, who only complained when they were deprived of their unlawful rebates, an opportunity to again indulge in their unlawful practices would be contrary to the principles of justice and should not be sustained.

We respectfully submit the decree of the lower court should be reversed and the bill or petition of the Interstate Commerce Commission should be dismissed.

ROBERT DUNLAP,
THOMAS J. NORTON,
Attorneys for The Atchison, Topeka and Santa Fe Railway Company, Southern California Railway Company, and Santa Fe Pacific Railroad Company, Appellants.

GARDINER LATHROP,
Counsel.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1905.

Office Supreme Court, U. S.
FILED
JAN 16 1906
Clerk.

Nos. 158-162.

SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SANTA FE PACIFIC RAILROAD COMPANY and SOUTHERN CALIFORNIA RAILWAY COMPANY,
Appellants,

vs.

THE INTERSTATE COMMERCE COMMISSION.

SOUTHERN CALIFORNIA RAILWAY COMPANY,
Appellant,

vs.

THE INTERSTATE COMMERCE COMMISSION ET AL.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Appellant,

vs.

THE INTERSTATE COMMERCE COMMISSION ET AL.

SANTA FE PACIFIC RAILROAD COMPANY,
Appellant,

vs.

THE INTERSTATE COMMERCE COMMISSION ET AL.

SOUTHERN PACIFIC COMPANY,
Appellant,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF ON BEHALF OF THE SOUTHERN PACIFIC COMPANY.

R. S. LOVETT,
MAXWELL EVARTS,
Of Counsel for Southern Pacific Company.

SUPREME COURT OF THE UNITED STATES.

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF ON BEHALF OF THE SOUTHERN PACIFIC COMPANY.

Statement.

The orange-producing lands of California are in the southern part of the State. There are in all about 88,000 acres, 27,000 of which are tributary to the lines of the Atchison, Topeka and Santa Fe System, 27,000 of which are tributary to the lines of the Southern Pacific Company, and the remaining 34,000 acres are served by both lines jointly (Record, p. 946). As a result of this equal physical division of the orange lands between the lines of the Southern Pacific and Atchison Systems, these roads have for years carried about the same amount of oranges. As was said by the Interstate Commerce Commission in its opinion (Record, p. 67):

> "Oranges, lemons, and other citrus fruits in southern California are grown in localities reached by the Southern Pacific and Santa Fe systems in such volume as to produce naturally about equal proportions along each line."

The Santa Fe, however, the mileage of which in the orange country is 328 miles as against 354 miles, the mileage of the Southern Pacific (Record, p. 286), has usually carried a few hun-

dred carloads a year more than the Southern Pacific. Sometimes as much as a thousand cars a year more (Record, p. 137). There is no rate cutting between the Southern Pacific and the Santa Fe in this orange traffic, and there has never been. The two roads have acquiesced in the fact that the natural physical division between them of the territory served ought naturally and properly to determine what each should carry, provided there was proper service furnished by each line. The competition, therefore, between the two roads for the orange traffic has been in the furnishing of facilities and the rapidity of transportation (Record, pp. 198, 960, 962).

Prior to January, 1900, oranges were carried in refrigerator and ventilator cars owned and furnished by private car lines and the right to route such oranges beyond the terminals of the initial carriers was sold by the shippers to such private car lines (Record, pp. 122, 803, 804, 818, 829, 833, 842, 852, 865, 890, 891 and 918). The terminals of the Southern Pacific were at Ogden and El Paso. The Atchison terminal was at Chicago. The price paid by the car lines was obtained from the eastern railroads in the fol-

lowing manner: an eastern road would arrange with a car line that in consideration of the latter routing its oranges over its road it would pay to such car line an excessive mileage per car, viz.: instead of the usual mileage of three-fourths of a cent per mile, a mileage of a cent or a cent and a half per mile (Record, p. 890).

The private car lines believed that they were not subject to the provisions of the Interstate Commerce Act and therefore boldly demanded this rebate out of which they would pay a small amount to the shipper and retain for themselves the larger part thereof. Sometimes the car lines pocketed it all. This rebate amounted at times to $35 a car. The petitioners in the original proceedings in this matter before the Interstate Commerce Commission had always demanded and obtained this rebate prior to January, 1900. One of the petitioners (the Southern California Fruit Exchange) was found by the Commission to have received in rebates $174,491 in four years (Record, p. 66).

The practice of paying rebates by the car lines increased very rapidly and the eastern connections of the appellants were engaged in bidding against each other for the orange business, the routing of

which was determined by the private car lines, solely by the amount which they could exact from the eastern lines therefor (Record, p. 896). The business had become such that there was no money in it for the eastern carriers. They continued to pay the rebates simply in the hope that matters would some time adjust themselves, and upon the principle that it was for their interest to still have a part of the business when such adjustment did occur (Record, pp. 917 and 918). The payment of rebates was confined entirely to the citrus fruit business. No other character of freight exacted or demanded the payment of rebates (Record, pp. 898 and 931). The situation as to the orange business was not unlike that which prevailed on all the railroads prior to the enactment of the Interstate Commerce Act, and was a situation intended to be cured and prevented by that act.

While the Southern Pacific was not paying and never did pay any rebates upon this traffic (Record, p. 917), yet the conditions resulting from this improper method of doing business were onerous and objectionable in many ways, inasmuch as the routing was determined entirely by the amount yielded to the car lines by the

eastern carriers (Record, p. 896). The fitness of such routes to do the business, the quickness with which the cars were returned to California, and the prompt payment of claims had nothing to do with the determination of what roads should carry the oranges beyond the terminals of the initial carriers.

The railroads paying the rebates objected as much to the practice as did the other parties concerned. The producers and growers of the oranges received little or no part of the rebates. The shippers (who in nearly every instance were not producers) sold their routing for what they could get out of the car lines, and the private car lines divided with the shippers the rebates received from the eastern railroads usually in the form of excessive mileage.

It was a complex and difficult situation, and the question which presented itself to the carriers engaged in this business was how they could best prevent this rate-cutting and giving of rebates. It was obvious that the routing of the oranges was a matter of small importance to the shipper, as he was willing to sell such privilege for the uncertainty of receiving a portion of the amount collected by the car lines from the

eastern connections. The only interest in routing which the shipper could possibly have was the right to divert the cars in transit from one market to another, and the right to have the cars enter their final destination on the line affording the best facilities for marketing the oranges. Having these points in mind, the initial carriers (the Southern Pacific Company and the Santa Fe system) and their immediate connections held a conference in San Francisco on the 6th and 7th of October, 1899, in which special consideration was given to this citrus fruit traffic, and it was determined that the exercise by the initial carriers of the right of routing beyond their own terminals which had always been reserved by them in their tariffs (Record, p. 62) would probably break up the rebate system which had grown up so rapidly and had become such a burden, and that it would make no real or substantial change in the relation of the shippers to their freight. Therefore in pursuance of such determination, the following circular letter was prepared and sent to all the eastern lines (Record, p. 875):

"Copy for information of Mr. E. Chambers, Indexed, 8593.

Representing

SOUTHERN PACIFIC CO. RIO GRANDE WESTERN RY.
UNION PACIFIC R. R. TEXAS & PACIFIC RY.
SANTA FE SYSTEM.

SAN FRANCISCO, Oct. 9, 1899.

CITRUS FRUIT TARIFF.

DEAR SIR:

At a conference held in this city on the 6th and 7th inst., at which the California terminal lines and their direct connections were represented, special consideration was given to citrus fruit tariff, and in order to effectively promote the observance of the interstate commerce act, thereby conserving the lawful interest of all concerned in the traffic, it was

Resolved, That current citrus fruit tariff be canceled November 14th, 1899, and taking effect November 15th, 1899, Agent Countiss publish for each of the roads represented at this conference, a tariff in connection with specified routes, comprising roads that give express assurance that they will not deviate from the rates provided therein, directly or indirectly, by any method or device, whether in conjunction with carriers, shippers, consignees or car lines.

In full assurance of their good faith, each road, in consideration of being made a party to the new tariff, shall give its assent to the cancellation of said tariff, so far as its own road is concerned, in event that rates are not absolutely maintained by it as contemplated in foregoing.

Further, said tariff shall bear the following lawful provisions:

'In guaranteeing rates, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving guaranty.'

May I ask that you promptly advise me as to whether you will give the assurances which, under the above resolution, are requisite to representation to your company in the proposed new tariff, and oblige

Yours very truly,

R. H. COUNTISS,

Agent.

General Note.—Indefinite or evasive responses will be construed as indicating an unwillingness to give the desired assurances."

Subsequently and on the 19th day of December, 1899, Wm. Sproule the freight traffic manager of the Southern Pacific Company and W. A.

Bissell, assistant traffic manager of the Atchison system, sent a joint telegram to the eastern lines as follows (Record, p. 869):

"12/19/99.

Wm. Sproule, D. H., 7168.
W. A. Bissell, D. H., 8741.

E. F. Cost, C. C. C. & St. L. Ry., Cincinnati, Ohio.

James Webster, Nickel Plate, Chicago, Ills.

Sam P. Shane, Erie R. R., Cleveland, Ohio.

Geo. B. Reeve, Grand Trunk Ry., Montreal, Que.

G. J. Grammer, L. S. & M. S. Ry., Cleveland, Ohio.

B. B. Mitchell, Michigan Central, Detroit, Mich.

E. L. Dawson, Pennsylvania Co., Chicago, Ills.

B. D. Caldwell, D. L. & W. Ry., New York City.

H. H. Kingston, Lehigh Valley, New York City.

S. B. Knight, Wabash R. R., St. Louis, Mo.

A. P. Bigelow, B. & O. R. R., Chicago, Ills.

A. S. Crane, Fitchburg R. R., Boston, Mass.

H. B. Chapin, Boston & Albany Ry., Boston, Mass.

W. F. Berry, Boston & Maine, Boston, Mass.

S. T. McLaughlin, B. & O. S. W., Cincinnati, Ohio.

On and after January first, nineteen hundred, California terminal lines have made arrangements for routing the citrus fruit traffic from California through to final destination. Have further arranged that no diversions shall be made without consent of terminal lines and have notified the car lines interested, who are agreeable to the changed conditions. From this action you will see that if any special arrangements have been made by any lines east of Chicago, or St. Louis looking to the control of the business either through car lines, shippers or any other source, that the results expected cannot be obtained thereby, and we would respectfully suggest their cancellation. This result you will see is in line with giving the legal protection contemplated to all shippers alike and protecting your interests in the traffic at full tariff rates.

WILLIAM SPROULE.
W. A. BISSELL."

To this joint telegram many replies were sent, but the general feeling with which the joint telegram was received is perhaps as well shown by the telegram received from the Cleveland, Cincinnati, St. Louis and Chicago Railway Company (Record, p. 873), which reads as follows:

"CLEVELAND, CINCINNATI, CHICAGO &
ST. LOUIS RY. CO.
E. F. COST, Freight Traffic Manager.

CINCINNATI, OHIO, Dec. 20, 1899.
(Office of Assistant Traffic Manager.)

Mr. W. A. Bissell, assistant traffic manager,
Santa Fe route, San Francisco, Cal.
Mr. William Sproule, freight traffic manager,
Southern Pacific Co., San Francisco, Cal.
Gentlemen:

Your telegram of December 19th in relation to the routing of citrus traffic from California received.

We are indeed glad to get this information as it will protect the revenues of the eastern roads against the undue competition of the several refrigerator lines who have heretofore practically sold their business at auction.

I think you are deserving of a vote of thanks from the Central Freight Association roads.

Very truly yours,
E. F. COST."

A special citrus fruit tariff was prepared and filed with the Interstate Commerce Com-

mission, effective November 15, 1899 (Record, p. 456) which contained the following clause:

> "In guaranteeing the through rate named herein the absolute and unqualified right of routing beyond its own terminals is reserved to initial carriers giving guaranty."

This tariff was superseded by another special citrus fruit tariff, effective January 1, 1900 (Record, p. 466), and subsequently by other similar special tariffs, and the clause in regard to the right of routing read in the later tariffs, as follows (Record, p. 987):

> "The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations hereinafter set forth."

After the new routing system was adopted, circulars were sent to the various agents of the initial lines in which the delivering lines preferred by shippers were expressly indicated (Record, pp. 785, 790), and a special provision was inserted to the effect that wherever delivering

line instructions conflicted with specific routings, the delivering line instructions should prevail. This direction was as follows (Record, p. 784):

> "NOTE 2. 'Specific routings' or 'delivering line instructions' must be adhered to. Should they conflict 'delivering line instructions' will prevail."

There was also in this routing circular a provision in regard to diversions which the testimony shows were always freely permitted whenever asked for. This provision reads as follows (Record, p. 786):

> "Diversions in transit will be permitted only by consent of initial carrier who will thereupon designate in the routing when diversion necessitates change therein."

Special matters of interest to special shippers were also covered by these routing circulars as appears on p. 795 of the Record where the agents of the Southern Pacific Company were especially directed not to route any fruit shipments made by a particular shipper by a certain line which for some reason was objectionable to that shipper.

> "NOTE 4. Do not route any citrus fruit shipments made by A. G. Stearns via the

St. Louis & San Francisco railroad. Please pay particular attention to this."

The routing circular referred to is the circular of latest date printed in the record (Record, pp. 785-796). The others are substantially in the same form and directly precede it in the record.

Shortly after the exercise of the right of routing by the initial lines under the tariff of January 1, 1900, it was arranged by the initial carriers that the shippers should have the right to instruct through what cities or markets they desired the cars to pass in transit to destination. The purpose of this privilege is obvious, and was given to enable the shipper to sell the car at some point prior to its final destination, if opportunity should offer. This instruction was given to the Southern Pacific agents on the 27th of February, 1900, and was as follows (Record, p. 801):

"LOS ANGELES, CAL., Feb. 27, 1900.

To all agents in California south of Mojave and Elwood:

Gentlemen: It has been decided to allow shippers the privilege of placing on shipping orders or other documents covering ship-

ments of citrus fruit, their preference of certain cities or markets through which they desire cars to pass, providing there [are] two or more lines of railway competing for traffic between each of the various points specified.

You may, therefore, accept on shipping orders, in accordance with the above, the following notation:

'Would prefer this car pass through ———' naming points.

Should any point be indicated, not served by competing lines, you will please request shippers to omit same.

Yours truly,

G. W. LUCE,

A. G. F. & P. A., So. Pac. Co."

It appears from the testimony that the routing of the citrus fruit after January 1, 1900, was substantially and to all intents and purposes over the same lines upon which it was routed prior to that time. The only difference being that round-about roads were eliminated and the most direct routes used (Record, p. 879). It is also shown by the evidence that the shipper after January, 1900, had the right of diversion as fully as ever (Record, pp. 136, 138 and 139, 911, 913 and 926), and had the further privilege of select-

ing the cities and markets through which his cars were to pass, which is equivalent, so far as practical purposes are concerned, to the right to route the freight (Record, p. 801). From the point of view of the shipper his position except as to rebates was substantially the same as it was before. This is conceded by the shippers (Record, pp. 253 and 261, 813 and 814), and the only claim made by them is that the time of transit since 1900 is not as quick as it was before.

Time is of course an important element in this traffic although as one of the shippers testified oranges ought to keep perfectly well for three to five weeks after delivery in eastern markets (Record, p. 857). It also appears from the testimony that the average delay in unloading the cars at destination, which is due solely to shipper and consignee, is at Chicago, for instance, about six days for each car (Record, p. 139). The explanation however of the difference in time of transit, which is perhaps two or three days longer since 1900, than it was before, is the heavy congestion on the railroads of the country and the inability to obtain equipment (Record, pp. 205, 911, 925 and 926). The citrus fruit traffic has not been delayed in pro-

portion to other traffic. It is still as it has always been a preferred traffic on the road, being given the right of way over everything except passenger traffic (Record, p. 925). This delay by reason of congestion of the railroads the witnesses say, would have been greater under the old system of routing prevailing prior to January, 1900, than it is under the present system (Record, p. 926), and the routing by the railroad has had nothing whatever to do with prolonging the time of delivery to eastern markets. This is substantially acquiesced in by the witnesses for the complainant.

The right to route freight was exercised by the railroads in regard to citrus fruit traffic simply for the purpose of destroying the rebate system. The judgment of the railroads was confirmed by the result and the practice of giving rebates and so discriminating against shippers was entirely done away with by the adoption of the routing by the initial carriers. The rebate evil, which had demoralized the orange traffic, absolutely ceased and of course left the car lines and those of the shippers, who had profited the most by it, in a dissatisfied condition and soon after the exercise by the initial lines of the right

to route the orange traffic and before the new plan could be given a fair trial, a petition was filed with the Interstate Commerce Commission by the Southern California Fruit Exchange, verified the 24th day of February, 1900 (Record, p. 35), and another petition by the Consolidated Forwarding Company, verified the 26th day of February, 1900 (Record, p. 13). These two companies had received large rebates, the Southern California Fruit Exchange having received about $175,000 in four years (Record, p. 66). It was very evident that the motive of the proceeding brought by these orange shipping corporations was their feeling against their competitor the Earl Fruit Company and the Continental Fruit Express, which owned private cars used upon the Atchison System under a five year contract which had some time yet to run. That is to say the Southern California Fruit Exchange and the Consolidated Forwarding Company felt that their competitor was still receiving rebates, while they were not, and the real motive back of the proceeding, as the President of the Southern California Fruit Exchange frankly states, was the fact that they were not getting rebates and wanted them.

After explaining that he had been receiving rebates for years, Mr. Naftzger, the president of the petitioner, in the original proceeding before the Interstate Commerce Commission, testifies as follows (Record, p. 806):

> "MR. HERRIN: You have paid the full tariff since January 1st, have you not, this year, refrigeration tariff?"
>
> "MR. NAFTZGER: I think so."
>
> "MR. HERRIN: Have you got anything back?"
>
> "MR. NAFTZGER: No sir."
>
> "MR. HERRIN: *Isn't that the trouble in this matter?*"
>
> "MR. NAFTZGER: *That is one of them.*"

The railroads answered fully the petitions and the proceeding was tried before the Interstate Commerce Commission. The whole controversy turned on the one question of whether the carrier had the right to determine the routing of the oranges to the exclusion of the exercise of such right by the shipper. The Commission came to the conclusion that the routing by the initial carriers was a violation of the Interstate Commerce Act and held at page 77 of the Record, as follows:

> "Our conclusion is that the practice of the defendant carriers in denying to the shippers the use of their transportation facilities by the established routes is in violation of the statutes, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage, and gives to the carriers an undue and unreasonable preference and advantage."

From this conclusion, the Chairman of the Interstate Commerce Commission dissented in a very able opinion given at page 77 of the record. That this question of whether the routing of the oranges by the initial carriers was an undue prejudice to the shippers was the sole question considered and determined by the Interstate Commerce Commission is shown by the conclusion of their opinion in which it is stated at page 77 as follows:

> "The evidence is unsatisfactory as a basis for definite conclusions upon the following questions: Whether the defendant carriers pool their citrus fruit traffic or divide the earnings therefrom. Whether the blanket rate of $1.25 per hundred pounds upon

> oranges and other citrus fruits from southern California to points on and east of the Missouri river, and the minimum carload weight of 26,000 pounds are unjust or unreasonable under the provisions of the statute. Whether the statute applies to the charges for refrigerating, and if so whether those refrigerating charges are unjust or unreasonable. These questions are retained by the Commission for further hearing and investigation."

It is further apparent from reading the dissenting opinion of Mr. Knapp, Chairman of the Commission, that the question of prejudice to shippers from the routing by carriers of the oranges was the only one considered.

An order was entered by the Commission in conformity with their opinion directing the initial lines to

> "cease and desist from and after the 20th day of June, 1902, from maintaining and enforcing a rule or regulation whereby shippers of oranges, lemons or other citrus fruits . . . are denied the right of designating for the transportation of their said property and having such property transported over any of the defendants' established and pub-

lished joint or continuous lines or routes" (Record, p. 84).

Upon the initial lines failing to comply with the order of the Commission, a proceeding was begun under the Interstate Commerce Act in the United States Circuit Court for the Southern District of California, in aid of and to enforce the order of the Commission (Record, p. 8). After alleging the facts which have been here stated, the complaint of the Interstate Commerce Commission proceeds as follows (Record, p. 11):

> "XI. And complainant charges that the said rule of the defendants and practice thereunder, which they are required by said order, Exhibit H hereto, to cease and desist from enforcing and maintaining, are in violation of the act to regulate commerce, in that, among other things, said rule and practice subject shippers of oranges, lemons, and other citrus fruits from points in southern California to points on and east of the Missouri River, and to other eastern destinations, to an undue or unreasonable prejudice or disadvantage, and, also, in that it subjects the traffic in oranges, lemons, and other citrus fruits between said points to an undue or unreasonable prejudice or disad-

vantage, and gives the said defendants an undue or unreasonable preference or advantage."

This proceeding in the Circuit Court was begun prior to the Elkins Act of February 11, 1903, giving the right to commence a proceeding directly in the Circuit Court, and was a proceeding in aid of and to enforce the order of the Commission and not a new proceeding. It was brought simply to enforce the order and to have determined the one question of whether the routing of freight by a carrier against the wishes of a shipper was an undue prejudice to such shipper, and the complaint of the Interstate Commerce Commission was drawn upon that theory. The important question in this controversy, the one in which the government, the carrier and the shipper are all interested, is whether the initial carrier can insist, as a condition of its guaranteeing a through rate to a point on its connecting lines, that it shall have the right to route the freight offered beyond its own terminal, without violating the Commerce Act, in thereby creating an undue and unreasonable discrimination and prejudice against the shipper. There is no other question in this case, and the insistence

on the part of counsel for the Interstate Commerce Commission that this proceeding is not one to enforce the order of the Commission, but a new proceeding under the Elkins Act passed subsequent to its commencement, and his desire to bring into this case questions which the Interstate Commerce Commission declined to pass on for the reason that the evidence "is unsatisfactory as a basis for definite conclusions" is evidently due to a feeling upon his part that the main question upon which all are interested in obtaining a decision, may go against him.

The railroads filed demurrers to the bill of complaint of the Interstate Commerce Commission. The demurrers were argued before Judge WELLBORN and were overruled.

Thereafter answers were filed by the Southern Pacific and the Atchison system, further evidence was taken, and the case was submitted to Judge WELLBORN. He was apparently of the opinion that the special citrus fruit joint tariff containing a provision as to routing by the initial carriers in consideration of the through rate provided therein was in effect a pool in violation of the fifth section of the Interstate

Commerce Act and decided the case in favor of the Commission.

At page 1044 of the Record he says in his opinion, after quoting from the decision of this Court in United States v. Freight Association, 166 U. S., 290, as follows:

> "No such situation, it should be borne in mind, was before the court then, as is here presented, namely, a traffic pool, or more specifically a contract for the distribution of freight between different and competing railroads by arbitrary routings of the initial lines, regardless of the wishes of shippers."

Further on at p. 1045, he says:

> "After careful consideration of the subject, I am of opinion that any contract, agreement or combination between different and competing railroads, whereby the volume or quantity of freights each or any shall receive for transportation is to be determined by or through any conventional means or agency, which was intended to, and does suppress competition either in rate or service or competition directly addressed to shippers, is a traffic pool, within the meaning of section 5 of the commerce act, and, that the routing contract here in controversy

does so apportion freights among the defendants' eastern connections and is essentially such a pool."

If we understand this decision rightly, Judge WELLBORN has held that there was an agreement between the initial carrier and the connecting carriers as to the distribution of freight over the eastern lines, to be accomplished by the adoption by the initial carrier of the routing of the freight. To support this conclusion there is absolutely no evidence in the record from beginning to end.

From the judgment entered upon the decision of Judge WELLBORN this appeal has been taken.

Specification of Errors.

The Circuit Court of the United States, for the Southern District of California, erred:

1. In that it did not sustain the demurrer of the appellants to the petition and complaint herein.

2. In that it did not dismiss the complaint and petition herein.

3. In that it did not hold that the Interstate Commerce Commission was not authorized to make the order of June 2, 1902.

4. In holding that the order of the Interstate Commerce Commission of June 2, 1902, was a lawful order.

5. In that it did not hold that the appellants had the right at common law to route through shipments beyond the terminals of their own lines, and that such right was in no way affected by any provision of the Act of Congress commonly called the Interstate Commerce Act and the amendments thereto.

6. In not holding that the appellants were authorized to exercise the right of routing citrus fruit shipments beyond their own terminals under the provisions of the special joint tariff of January, 1900, and the special joint citrus fruit tariffs subsequent thereto.

7. In holding that the routing provision in the joint tariff set forth in the decree below is an agreement and combination for the pooling of freights of competing railroads, or is in any respect in violation of section 5 of the Interstate Commerce Act.

8. In holding that it was authorized to examine into and determine in this proceeding any question or questions beyond those determined by the Interstate Commerce Commission in the

original proceeding brought before it by the petitions of the Southern California Fruit Exchange and the Consolidated Forwarding Company, verified respectively the 24th day of February, and the 26th day of February, 1900.

9. In not holding that the proceeding brought before it was simply in aid of and to enforce the order of the Commission of June 2, 1902, and that no matters were before it other than those considered and determined by the Interstate Commerce Commission.

10. In holding in effect that the proceeding before it was a new proceeding and not simply a proceeding to enforce the order of the Interstate Commerce Commission of June 2, 1902.

FIRST POINT.

The Court below was without jurisdiction to hold that the joint tariff referred to in its final decree was a violation of the pooling clause of the Interstate Commerce Act. The proceeding in the Circuit Court was in aid of and to enforce the order of the Interstate Commerce Commission. While a proceeding de novo in the sense that it was open to the lower Court to take further testimony and to determine for itself questions decided by the Interstate Commerce Commission, yet its jurisdiction was limited to the determination of whether the order of the Interstate Commerce Commission was lawful, and not whether it would have been possible to make a lawful order in the case. If the Court found the order lawful, then its duty was to enforce it. If it found the order could not be upheld for the reasons given therefor by the Interstate Commerce Commission, then its duty was to dismiss the petition, and it was without power to determine that a lawful order could have been entered upon grounds other than those considered by the Interstate Commerce Commission.

By the order of the Interstate Commerce Commission, the appellants were required to cease and desist from enforcing a rule whereby shippers of oranges and other citrus fruits were denied the right of routing beyond the terminals of the appellants. The order itself does not give the reasons upon which it is based. It is therefore necessary to examine the opinion of the Commission to determine whether the order was a lawful order or not. From the opinion it appears that the ground for making the order is that the exercise of routing by the initial carriers subjects the owners and shippers of the oranges to "undue, unjust and unreasonable prejudice and disadvantage and gives to the carriers an undue and unreasonable preference and advantage" (Record, p. 77). This is the basis and reason for the order, and the only question presented to the court below was whether the exercise of such routing privilege did create a prejudice and disadvantage to the shippers and give the carriers an unreasonable preference and advantage in violation of the Interstate Commerce Act. If so, then the order was lawful and was properly upheld. If it did not, then the petition should have been dismissed by the Circuit Court.

In the petition of the Interstate Commerce Commission filed to enforce the order of June 2, 1902, the whole ground of the complaint against the railroad companies was that the routing rule and its enforcement subjected the shippers to an undue and unreasonable prejudice and disadvantage and gave to the railroad companies an undue and unreasonable preference and advantage. This clause of the complaint or petition is as follows (Record, p. 11):

> "XI. And complainant charges that the said rule of the defendants and practice thereunder, which they are required by said order, Exhibit H hereto, to cease and desist from enforcing and maintaining, are in violation of the act to regulate commerce, in that, among other things, said rule and practice subject shippers of oranges, lemons and other citrus fruits from points in southern California to points on and east of the Missouri River, and to other eastern destinations to an undue or unreasonable prejudice or disadvantage, and, also, in that it subjects the traffic in oranges, lemons, and other citrus fruits between said points to an undue or unreasonable prejudice or disadvantage, and gives the said defendants an undue or unreasonable preference or advantage."

From this pleading, it is clear that the Interstate Commerce Commission when it brought this proceeding in the Circuit Court understood that it was simply a proceeding in aid of the order of June 2, 1902, and that no matters were to be considered by the Court beyond the question whether the order was a lawful one for the reasons given by the Interstate Commerce Commission for the making thereof. The testimony was taken before the Court below upon this theory. It was understood that the proceeding in the lower Court was a *de novo* proceeding only in the sense that further testimony could be taken upon all questions determined by the Interstate Commerce Commission, and that no further matters were to be raised or considered beyond those considered by the Commission. That is to say, the duty of the Court below was to decide the single question of whether the order as entered was a lawful order, and not whether it would have been possible for the Interstate Commerce Commission to have entered an order on other grounds which would have been lawful and proper. It will not do for the Circuit Court in a proceeding of this character to say that the order as entered was not lawful and that the Interstate Commerce

Commission had not the power to make such an order for the reasons given by it, but that there were in the opinion of the Court other grounds and reasons which would sustain such an order, and which had been developed in the proceeding before it. To do this would in effect deny to the railroad companies their day in court. They came in to the Circuit Court to try the issue raised by the pleadings. That issue was clearly defined and was whether the shippers of oranges had been prejudiced by the exercise by the initial carriers of the right of routing beyond their own terminals. This was the single issue presented by the pleadings, and the carriers were justified in supposing that no other question was properly before the Court; that other matters than the issues raised by the petition and answers were not to be considered by the Circuit Court in a proceeding brought to enforce an order of the Commission and that it was not open to the Court below to determine that the routing rule was not a discrimination against the shippers in violation of the Intestate Commerce Act, and did not create any undue prejudice against them, but was a pooling agreement in violation of the fifth section of the Act. The decisions of the

courts have invariably been to this effect, and if there had been the slightest doubt upon the point then, of course, the railroads would have introduced evidence upon this latter question and shown that no such pooling combination or agreement ever did in fact exist.

In an ordinary proceeding a litigant is expected to introduce evidence in his behalf only upon the points as to which an issue has been raised by the pleadings, and the Court in deciding the case passes only upon the questions at issue and does not determine the case upon grounds not raised by the pleadings or considered upon the trial, and it is certainly a somewhat novel and unusual proposition to say that in such a complex and difficult case as the present one, involving large matters of immense importance to the public and all the railroads of this country, the proceeding was to be disposed of by what might be called a snap judgment upon a point which was not raised by the pleadings and as to which the attention of the appellant was in no way properly called at the time of the trial. That is to say, the ordinary rule should certainly be applied in a proceeding of such magnitude as the present one, and before deciding this controversy upon a

point in no way considered by the parties to be before the Court, the petition should be dismissed with leave to bring a new case in which the point now made by the Court could be raised in the pleadings and tried out at length.

Upon finding that the order as entered was not a lawful order and could not be sustained upon the grounds given therefor in the opinion of the Interstate Commerce Commission, it was the duty of the Circuit Court under the decisions, as we understand them, to dismiss the proceeding without prejudice to a new proceeding to be begun before the Commission in which the pooling charge could be tried, and a full examination of that question made.

To put it in another way, the Circuit Court did not have power to find that the reasons given for the order by the Interstate Commerce Commission were wrong, but that such Commission could have given reasons which would have made the order a lawful order and that therefore the Court, as a Court of Equity, could determine the matter without sending it back for further trial.

There are many authorities which discuss the jurisdiction of the Circuit Court in a proceeding brought to compel obedience to an order of the

Interstate Commerce Commission, and all of them seem to hold that such a proceeding is not a new one, in which all questions can be raised in any way relating to the subject-matter of the complaint, but that the jurisdiction of the Court is limited to the question of whether the railroads have violated a lawful order of the Commission, and whether such order is lawful or not is to be determined by the grounds given by the Interstate Commerce Commission for making it. The Court is not to decide whether the appellants have violated an order which the Commission *might* have lawfully made, but whether they have violated one which *was* lawfully made. This distinction is well brought out by Judge WALLACE in the case of *I. C. C.* vs. *D. L. & W. R. Co.*, 64 Fed. Rep., 723, where he said:

> "The Court cannot substitute for an order actually made one such as the Commission might or should have made, or such as the Commission was entitled to but failed to make. This court has no revisory power over the orders of the Commission. Its function in a proceeding like this is merely to inquire whether the respondents, the common carriers, have refused or neglected

to perform any lawful order or requirement of the Commission. It cannot undertake to decide whether the respondents have violated one which the Commission might have lawfully made. It is not a violent presumption that if the order had been in terms one such as the Commission intended to make, the respondents would have contested its propriety and refused to obey it."

In *Detroit G. H. & M. Ry. Co.* vs. *I. C. C.*, 74 Fed. Rep. 803, 841, the Circuit Court of Appeals for the Sixth Circuit, held as follows:

"Whatever may be the plenary power of a court of equity to command at the suit of those who are injured, the performance of any duty arising out of a contract or statutory obligation, the jurisdiction it was exercising here is strictly special and statutory, and is limited, as all special jurisdiction is, to the precise power conferred by the interstate commerce act, which is only to compel obedience to the 'lawful order' of the commission. It has not been granted any broader power to exercise the authority of the commission itself by substituting a new regulation or order of its own, or modifying that which the Commission has given. It is purely an auxiliary jurisdiction. * * *

> The powers of the Commission being administrative, and not judicial, the ancillary and supplemental judicial jurisdiction is necessarily limited to the purpose of its creation, and can go no further than to grant or refuse compulsory obedience to the lawful orders of the Commission, and as it makes them."

In *I. C. C.* vs. *L. & N. R. Co.*, 73 Fed. Rep., 409, 413, it was said:

> "It is conceded by counsel for both sides of the case that the Court, in its power and jurisdiction over the matter, is limited to an approval or disapproval, and to the enforcement or refusal to enforce the order of the commission as a whole or in part just as made by the Commission, and that the Court is without power or authority to treat the case as one originally instituted in this Court, and make an order or decree of its own, or to modify the order of the Commission for the purpose of making it conform to the opinion of the Court in case the Court should entertain a different opinion from that of the Commission; and such would seem to be the proper construction of section 16 of the act."

In *Farmers' Loan and Trust Co.* vs. *Northern*

Pac. Ry. Co., 83 Fed. Rep. 249, 267, the Court said:

> "The proceeding is founded upon section 16 of the interstate commerce law, and has a specific object, viz., to enforce a decision and order of the interstate commission. * * * In such a proceeding the court has no general power to adjust differences between the litigants, or to correct abuses in the conduct of its business by a railroad company; and unless a valid order has been made by the Interstate Commerce Commission, and violated by the railroad company, no relief can be granted to the petitioners."

If we read these authorities correctly then the Circuit Court in a proceeding to enforce an order of the Interstate Commerce Commission has but one question before it, viz.: Was such order a lawful order, and to determine that one question, it must decide whether the grounds given by the Interstate Commerce Commission for that order were sound. If they were, then the order must be enforced; if they were not, then it is not the duty or within the jurisdiction of the Court to find sound reasons for the order, but it must dismiss the petition. Its duty is fulfilled when it

determines that the order as entered for the reasons given for its entry cannot be sustained, and the proceeding in the Circuit Court is not deemed to be a new proceeding, but a proceeding in aid of the administrative order of the Interstate Commerce Commission, which is a *de novo* proceeding only in the sense that the questions determined by the Interstate Commerce Commission can be examined at length on additional evidence introduced before the Circuit Court.

It is therefore respectfully submitted that the court below was without jurisdiction to hold that the joint tariff referred to in its final decree was in violation of Section 5 of the Interstate Commerce Act and that such court was limited in its jurisdiction to the question whether the order of the Commission as entered was lawful, that is to say whether it could be upheld for the reasons given by the Commission for making it.

SECOND POINT.

At common law the appellants could route through freight beyond their own terminals and they have not been deprived of such right by the Interstate Commerce Act.

It will no doubt be conceded that in the absence of any statute on the subject a carrier when it undertakes to carry freight beyond its own terminals has the right to select the route over which the freight shall be shipped. The principle is that a carrier when it agrees to transport freight beyond its own line does so not as a common carrier, but under an independent contract governed by the same rules that any contract is controlled by. Under the common law, therefore, it is clearly open to a carrier, which has contracted to carry beyond its own lines, to select the agency through which to perform the contract made by it with the shipper.

This proposition is undisputed and was before this Court in the case of *Atchison, Topeka & Santa Fe R. R. Co.* vs. *Denver & New Orleans R. R. Co.*, 110 U. S., 667. In this case it appeared that the Constitution of Colorado provided that "all individuals, associations and corporations

shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers within the State, and no railroad company, nor any lessee, manager or employee thereof shall give any preference to individuals, associations or corporations in furnishing cars or motive power." A bill in equity was filed by the D. & N. O. R. R. Co. to compel the Atchison Company to unite with the D. & N. O. Company in forming a through line of transportation through and from Denver over the D. & N. O. road, with all the privileges as to exchange of business, etc., that were granted to the Denver & Rio Grande Railroad Company operating a road parallel to the D. & N. O. Company. A final decree was entered for the complainant, from which an appeal was taken to this Court, and the case was reversed and the bill ordered dismissed without prejudice. In the opinion at page 680, it was said by Chief Justice WAITE, as follows:

> "At common law a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go be-

yond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of the contract, and if he holds himself out as a carrier beyond the line, so that he may be required to carry in that way for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position by extending his route with the help of others, than he would occupy if the means of transportation employed were all his own. He certainly may select his own agencies and his own associates for doing his own work."

It is to be noticed that the provisions of the Constitution of Colorado in reference to undue and unreasonable discrimination are not dissimilar to the provisions of the Interstate Commerce Act in that regard.

This principle was again approved in the late case of *Louisville, &c., R. R. Co.* vs. *West Coast Naval Stores Co.*, 198 U. S., 483, 497, where it was said, referring to the Atchison case:

"In that case it was held that, although at common law the common carrier was not

bound to carry beyond its own lines, yet it might contract to do so, and in the absence of statutory regulations prohibiting it the carrier might determine for itself what agencies it would employ to continue the transportation, and it was not bound to enter into agreements for each [such] transportation with another because it had done so with one common carrier. * * * The principle stated in the above case is in substance recognized in *Gulf, &c., Ry. Co.* v. *Miami SS. Co.*, 86 Fed. Rep. 407; *Little Rock &c., Ry. Co.* v. *St. Louis &c. Ry. Co.* 63 Fed. Rep. 775, affirming same case in 59 Fed. Rep. 400. The two last cases involved the construction of the Interstate Commerce Act, but they affirm the principle that a common carrier may agree with such other carrier as it may choose, to forward beyond its own line the goods which it had transported to its own terminus."

The case of *Post* vs. *Railroad Co.*, 103 Tenn., 184 (52 S. W., 301), is on all fours with the case at bar. In the Post case, it appeared that shippers of cotton from Memphis, Tenn., to eastern points insisted that they had the right to determine by what routes the cotton should be carried after leaving the terminals of the Rail-

road Company. The only interest of the shippers in the matter was apparently the same as that which the petitioners before the Commission in the present case had, viz.: an interest in rebates, and upon this point the Court said (p. 219):

> "It also clearly appears, so far as this record shows, that the matter of routing cotton is one of indifference to shippers at Memphis, except so far as it is required by the demands of eastern consignees; and it further appears that these demands are made in the interest of the Star Union, a fast freight line operating in eastern territory, having no road of its own, and not entering the city of Memphis over the line of any other road, but proposing to so bill and route cotton at Memphis as to secure its carriage over its own line when it reaches its eastern field of operation. Whether shippers or consignees receive directly or indirectly, any rebates or concessions as a result of shipments over this fast freight line, is the question which complainants refuse to answer, because it might tend to incriminate them; but there is other evidence that by some secret arrangement such rebates are secured. The effort, then,

> resolves itself into one by which eastern consignees seek to create a monopoly in the carriage of cotton by the Star Union line wherever it enters or passes through its territory, and this because of some undisclosed secret arrangement by which either consignees or shippers obtained rebates and concessions not enjoyed by other freight or railroad lines. The courts cannot be used to carry such arrangement into effect."

The Southern Railway Company refused to permit shippers to select the routes beyond its own terminal, and exercised the right of routing itself. A bill was thereupon filed by the cotton shippers praying for a mandatory injunction compelling the Southern Railway Company to route the cotton beyond its terminals over the lines selected by complainants. The case was tried, and a decree for the complainants was entered. From this decree an appeal was taken to the highest court of Tennessee, and the decree of the lower court reversed, and it was held in a very well considered opinion, at pages 214 and 220, that

> "When goods are tendered for shipment to a point beyond the carrier's line, and there are two or more routes equally safe,

prompt and reliable, the carrier cannot be compelled to accept the goods to be carried over one route in preference to another, at the option of the shipper, unless some reason appears therefor; and especially is this so when the carrier shows that in the conduct of its business the use of one route may be advantageous to it, without injury or sacrifice to the interests of the shipper. * * *

"We are of the opinion that upon the main questions as to the right of carrier and shipper to designate the route of through shipments at through rates, all other questions being out of the way, the law is and should be that, in the absence of any sufficient or controlling reason to the contrary, the carrier should have that right."

The question therefore comes to this: What provision of the Interstate Commerce Act (if any), deprives the appellants of the right which they would have at common law, to select the route over which the oranges, which they undertake to carry to eastern points, should be transported beyond their own terminals. There is certainly no specific provision of the Act upon the point.

A majority of the Commission was of the

opinion in the original proceeding that such right of routing was in violation of the Act because its exercise resulted in subjecting the shipper to an undue and unreasonable prejudice and disadvantage, and gave to the carrier an undue and unreasonable preference and advantage. The Court below, however, was apparently unable to follow the reasoning of the Commission, and to see how any shipper was subjected to any prejudice or disadvantage by reason of the selection by the carrier of the agency, which it deemed most desirable, to carry out the contract which it had made to transport the oranges from California points to Eastern points. The Court, therefore, disregarded the decision of the Interstate Commerce Commission and the grounds given therefor, and held that the right of routing was not contrary to the provisions of section third or sixth of the Interstate Commerce Act, as the Commission had held, but was in effect a traffic pool with the eastern lines and in violation of the fifth section of the Interstate Commerce Act.

We have, therefore, two grounds suggested in support of the proposition that the Interstate Commerce Act deprives a carrier of its common law right to route through freight beyond its

own terminals—one by the Commission and the other by the Court. If neither of these appeal to this Court as sound, then we think it safe to assume that no other reason can be given to sustain the position that the Interstate Commerce Act forbids the routing by a carrier of through freight beyond its own terminals. It will, therefore, be necessary to review in detail, first, the decision of the Interstate Commerce Commission, and then, the decision of the Court below.

DECISION OF INTERSTATE COMMERCE COMMISSION.

In the consideration of the decision of the Commission, it is necessary to clearly understand just what this special citrus fruit tariff was. The appellants were under no obligation as common carriers to furnish to the shippers of oranges through transportation therefor from California points to eastern points or to give them especial accommodations. Their duty was entirely fulfilled by the carriage of the fruit to their own terminals, and the delivery thereof to their connecting carriers, charging therefor the full local rates, and only furnishing ordinary cars for the transportation thereof, requiring the unloading of such cars at

their terminals, and the reloading there of the oranges into cars of the connecting carriers. This was the full legal obligation of the appellants to the orange shippers. They, however, agreed with such shippers that if the latter would permit them to route the freight and select the carriers beyond their own terminals they would transport the oranges from California points to eastern points at the low rate of $1.25 a hundred. The consideration of such transportation was not the $1.25 a hundred, but the $1.25 a hundred and the right to route the freight beyond their own terminals. This contract was contained in the special joint tariff filed in November, 1899, and subsequently succeeded by similar citrus fruit tariffs. This provision of the contract between the carriers and the shippers as contained in the joint tariff of May 8, 1903, was as follows (Record, p. 987):

> "The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond its terminus as well as upon the other conditions, provisions and stipulations hereinafter set forth."

The orange shipper had, therefore, the alternative of delivering its oranges to the appellants, to be carried under local rates to their terminals and there delivered to the connecting carrier, or of making a contract with the appellants for the carriage of the oranges to their point of destination in the east, under terms and conditions which the appellants stated were the only terms and conditions in pursuance of which they would undertake this duty. It is important to recollect that the duty or obligation of carriage to eastern points was not assumed by the initial lines under their obligation as carriers, but was a contract made independently of such obligation, so far as the carriage of the oranges beyond their terminals was concerned. As to carriage of freight beyond their own terminals, the appellants were in no way affected by the fact that they were common carriers, and they were free to carry on what terms they chose, or not to carry at all. It was open to the shipper to either make the contract which the appellants offered, or to resort to the obligation of the carrier under the common law as to transportation over its own lines. The shippers certainly could not compel the appellants to make with

them such a contract as they thought desirable in reference to the carriage of the oranges beyond the terminals of the initial lines. As to such transportation carriers were as free to contract as if they were not carriers, and it was for the shippers either to take the contract offered or else to send their freight over the lines of the appellants at local rates to be delivered at their terminals to their connecting carrier.

A carrier at common law has the right to select the agency which it shall employ to carry freight beyond its own terminal. The Interstate Commerce Act does not forbid this, but in the 6th section provides that when passengers or freight pass over continuous lines or routes operated by more than one carrier, and the several carriers establish joint tariffs of rates, copies of such joint tariffs must be filed with the Commission. The question then comes to this: Does this provision, in general terms as to the filing of a joint tariff, deprive the carrier of its common law right of routing?

It is to be noted that ever since the Interstate Commerce Act two or more connecting carriers might have an arrangement by which the initial carrier forwarded its freight on through bills of

lading over certain of its connections to the exclusion of others without the establishment of any joint rate. The goods might be forwarded under local rates over each road. Such an arrangement could in no way be claimed to be a violation of the Interstate Commerce Act and would be entirely within the common law. Does, then, such an arrangement become a violation of the Act simply because there is a joint tariff agreed on between the connecting carriers instead of the local rate being paid on each road?

It is certainly difficult to see what effect such a difference, viz.: that in one case there is a joint tariff and in the other there is not, can have on the question of the initial carrier having the right to route beyond its own terminal. If it can be done when there is no joint rate, then why can it not be done when there is a joint rate. What is there in the joint rate which should deprive the initial carrier of its undoubted common law right of routing?

It is still less plain when it is borne in mind that the joint tariff is a matter entirely of private arrangement between the carriers not governed in any way by the Act. As was said by Mr.

Justice BREWER in *Chicago & N. W. Ry. Co.* v. *Osborne*, 52 Fed. Rep., 912, 915:

> "The whole matter is left to the voluntary action of the companies, and in forming by agreement any joint tariff, the basis of division and the proportion of moneys each shall take is also a matter left to their determination."

In *Little Rock & M. R. Co.* v. *St. Louis, etc., Ry. Co.*, 63 Fed. Rep., 775, 778, it was said:

> "That neither by the common law nor by the Interstate Commerce law have the national courts been vested with jurisdiction to compel interstate carriers to enter into arrangements or agreements with each other for the through billing of freight, and for joint through rates. Agreements of this nature, it is said, under existing laws, depend upon the voluntary action of the parties, and cannot be enforced by judicial proceedings without additional legislation."

In *Ky. & I. Bridge Co.* v. *Louisville & N. R. Co.*, 37 Fed., 567, 590, the Court said:

> "It is shown by the evidence that arrangements for joint through routes and through rates which create and establish a quasi partnership and agency relation be-

> tween the parties thereto are always, and necessarily, the subject-matter of private contract or agreement between the railway companies over whose roads the traffic is conducted, based upon various considerations."

As the joint tariff and what it shall contain is entirely a matter between the connecting carriers themselves, it is open to them to make any condition in it they see fit affecting their relation with each other, and in the present case the joint rates were agreed on between them upon the express condition that the initial carrier should have the right of routing beyond its own terminal. This clause of the joint tariff is found at p. 987 of the record as follows:

> "The joint tariffs and rates herein named are made and entered into upon the express condition that the initial carrier shall have and exercise the sole and exclusive right of routing all shipments under said joint rates beyond his terminus as well as upon the other conditions, provisions and stipulations hereinafter set forth."

The question now comes up whether the joint tariff as filed violates the Act because of the routing clause in it when such right of routing is vested in the carrier at common law.

The ordinary rule of construction requires that before a right which exists prior to a statute can be taken away it must be clear from the terms of the statute that such was the intention of the legislature, and before the carrier can be deprived of its right to route freight beyond its own terminal, which it has at common law, it must so appear by the clear and specific terms of the Act.

As to this, it was said by the Circuit Court of Appeals for the Eighth Circuit in *Little Rock & M. Ry. Co.* vs. *St. Louis, etc., R. Co.*, 63 Fed. Rep., 775, 777:

> "So far as we are aware, no complaint had been made of abuses of this character at the time the interstate commerce law was enacted, and it may be inferred that the particular wrong complained of was not within the special contemplation of congress. This being so, the general words of the statute ought not to be given a scope which will deprive the defendant company of an undoubted common law right, which all other individuals and corporations are still privileged to exercise, and ordinarily do exercise."

And again at pages 779, 780, the Court restated the principle as follows:

> "Another necessary result of the doctrine contended for is that it deprived railway carriers in a great measure of the management and control of their own property, by destroying their right to determine for themselves what contracts and traffic arrangements with connecting carriers are desirable and what are undesirable. *There ought to be a clear authority found in the statute for depriving a carrier of this important right, before the authority is exercised*, for, when questions of that nature have to be solved, a great variety of complex considerations will present themselves, some of which can neither be foreseen nor stated."

There is certainly nothing specific in the Act which prohibits an initial carrier from routing freight beyond its own terminal. Neither is there any general expression or clause which can be given that meaning. It is not at all clear how any such thought or intention could have been in the mind of Congress for it was legislating as to rates and not as to routes. It was passing a law requiring rates to be public and stable and not subject to change except after

notice for a given period and providing that there should be no discrimination in rates. There is nothing in the statute from beginning to end which contains the remotest suggestion as to routes and routing or shows that Congress ever considered such question.

Now, while the routing clause in the joint tariffs was an agreement between the connecting carriers, it was also a part, and an important part, of the consideration to be received by the carrier from the shipper for the service to be performed by the former. It was the condition of the agreement of transportation between the shipper and the initial carrier that the latter should have the right of routing. The offer of the carrier was that it would transport the oranges to eastern points if the shipper would pay $1.25 a hundred and give the initial carrier the right of routing. That the initial carrier should have the right of routing was one of the reasons of the rate charged for the transportation. It was the condition upon which the offer under the joint tariff was made. It was open to the shipper to accept the joint tariff as offered or to reject it. It was not open to him to make or to ask the Commission to make a joint tariff

to suit himself or such as he thought the railroad ought to make. The kind of a joint tariff which a railroad must make is not controlled by the Act. That is subject to agreement between the parties to it and there is nothing in the Act which gives the Commission the power to change the tariff as filed, and say what sort of a joint tariff should be made.

In *Central Stock Yards Co. vs. Louisville & N. R. Co.*, 118 Fed. Rep., 113 (affirmed in 192 U. S., 568), Mr. Justice DAY in his opinion said at p. 118:

> "But have the courts the right, in the absence of statute, to dictate to carriers the contracts they shall make in the interchange of traffic, and to require such to be carried out as the courts deem reasonable? The billing and transfer of freight from outside points over the two railroads is a matter of arrangement between them. The proportion of the joint tariff each shall receive, the handling of cars, the liability of one to the other, and other matters, are to be determined by the contract between the parties. Each controls its own railroad, and *may determine for itself upon what terms it will unite in a joint tariff.* No arrange-

ment exists with the Southern Railroad for the transportation and delivery of cars of live stock to the Central Stock Yards, if that can be assumed to be a station on the line of the Southern Railroad; *nor do we think a court of equity has the power to make one and supervise its execution; nor has this right been conferred upon the courts by the Interstate Commerce Act.* This doctrine is so thoroughly established as to require no more than the citation of the authorities in support of it."

In the case of *Prescott & A. C. R. Co.* vs. *Atchison, T. & S. F. Co.*, 73 Fed. Rep., 438, 439, Mr. Justice LACOMBE said:

"Now I know of no principle of common law which forbids an individual railroad corporation, or two or three or more corporations, from selecting as to which one of two or more corporations they will employ, as auxiliary to their own lines, as the agency by which they will send freight beyond their own lines, or as their agent to receive freight on the auxiliary line to be transmitted to their own line upon through bills, and without breaking bulk. *And I do not find in the interstate commerce law sufficient to warrant*

the conclusion that the law has been changed in that particular."

In the case of *Cinn., N. O. & Tex. Pac. Ry. Co.* vs. *Interstate Commerce Commission*, 162 U. S., 184, 197, this Court adopted with approval the following language of Mr. Justice JACKSON in the case of *Interstate Commerce Commission* vs. *B. & O. R. R. Co.*, 43 Fed. Rep., 37:

> "'Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, *the act to regulate commerce leaves common carriers as they were at the common law*, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits.'"

If we are right in our understanding that the connecting carriers were not obliged under the

Interstate Commerce Act to make joint tariffs, and that any joint tariff was a matter of private arrangement between the carriers making it, and that only until made and as filed, it was subject to the provisions of the Interstate Commerce Act, then it is certainly difficult to see how any provision of such joint tariff, as between the parties making up the joint route, that the initial carrier shall have the right to route beyond its own terminal, can be deemed to be a violation of the sixth section of the Interstate Commerce Act.

The only attempt of the Interstate Commerce Act to control in any way joint tariffs is the provision in the 6th section of the Act requiring such tariffs, when agreed on between the railroads, to be filed with the Commission and to be given such publicity as the Commission may prescribe and the further requirement that such joint tariffs shall not be advanced or reduced except upon certain conditions. The terms of the joint tariff and the conditions upon which it is entered into by the parties are left open to the railroads and no control of such terms and conditions is vested in any way in the Commission. As was said by this Court in *Interstate Com-*

merce Commission vs. Railway Company, 167 U. S., 479, 504:

> "Further when two carriers shall unite in a joint tariff (and such union is nowhere made obligatory, but is simply permissive) the requirement is only that such joint tariff shall be filed with the Commission, *and nothing but the kind and extent of publication thereof is left to the discretion of the Commission.*"

It is, however, claimed by the Commission that the exercise of routing by the appellants beyond their own terminals was a violation of the Interstate Commerce Law in that it subjected the shippers to "undue, unjust and unreasonable prejudice and disadvantage" (Record, p. 77). Just how this resulted is not made plain in the opinion of the Commission, and certainly does not appear from the testimony. All shippers had the same rights, and there was no discrimination between them. Every shipper had the right to compel the carrier to fulfill its obligations as a carrier, and carry the oranges offered to its terminals and there deliver the same to its connecting carriers, or to accept the offer made by the initial carrier to transport the oranges at a low price without

breaking bulk through to eastern points beyond its own terminals, if it controlled the routing. There was no discrimination or prejudice or disadvantage as between one shipper and another of any kind, either unjust or unreasonable or otherwise. Every shipper was treated alike, and we know of no answer to the statement of Mr. Knapp, the Chairman of the Interstate Commerce Commission, in his dissenting opinion, when he says (Record, p. 79):

> "Of course the carrier must exercise the right of routing in such way as to avoid discrimination between different shippers. That goes without saying, and it is a significant fact in this connection that it was not alleged in the complaints, proved at the hearing or claimed in argument that any actual discrimination between shippers had resulted from the control of the routing by the defendant carriers."

The same charge is made to each shipper. The same service is performed for each shipper, and so far as appears from the testimony the claim that the right of routing has been denied to the shipper is more a matter of words than of fact. The shipper under the present system is

given the right to select the line which shall deliver the oranges at the point of destination. He is given the right of diversion which is more promptly and satisfactorily performed now than it was prior to January, 1900. He has further the right to designate the towns through which his oranges shall pass on their way to final destination, in order that he may sell them at such points while in transit. The shipper is also given by the carrier on the day of shipment the routing which the oranges will take. It is difficult to see what more the shipper could have if he exercised the right of routing.

The whole matter, therefore, comes down to this one point: that the discrimination and undue prejudice complained of is the depriving the shippers who formerly received them of the rebates paid to them by the car lines. Having received these rebates for years, the shippers had come to regard them as properly belonging to them, and to be taken into consideration in estimating the profits of the orange business. It can hardly be claimed that this discrimination is one contemplated by the Interstate Commerce Act, and the result of the routing rule so far as it deprived the shippers of rebates cannot be

deemed in any way a violation of the Interstate Commerce Act.

The fact that the right of routing was not exercised by the appellants in any large degree as to other kinds of freight and citrus fruit does not result in any way in prejudice to such shippers as against the shippers of other products. Such right of routing was reserved and had always been reserved to the appellants in their general tariffs, but was only exercised when necessary. No rebates were paid in any other class of freight than citrus fruit and the occasion therefore seldom arose for exercising the right of routing. When it did, the railroads routed the freight. The testimony is undisputed that oranges were preferred freight. They were given the right of way over every other kind of traffic except passenger traffic. Every effort was made to expedite their transportation, and while it might be open to other freight to say that they were prejudiced by the preference given to the orange shippers, yet it is not clear how the latter could complain when their business was placed ahead of all other traffic.

In addition, the testimony shows that the oranges were sent forward to eastern points over

substantially the same routes after January, 1900, that were used prior to the adoption of the routing rule by the railroads (Record, p. 879). Further than that, the evidence is that, when a shipper requested a special routing, it was almost invariably granted. The one exception was when the railroad believed and had reason to believe that the request was not made in good faith but simply to test the right of the carrier to make the routing.

It therefore seems impossible to claim that the shippers have been subjected to any "undue, unjust and unreasonable prejudice and disadvantage" within the terms and meaning of the Interstate Commerce Act.

What is meant by the Commission in its opinion (Record, p. 77), when it says that the routing rule "gives to the carriers an undue and unreasonable preference and advantage" is not plain. In the first place, it is not clear what preference and advantage the carriers gain by this routing except that they are able to prevent rebates which are prohibited by the Act. So far as their own lines are concerned, the appellants get no more business whether they route the oranges or whether the shippers do. In either

event the orange cars must leave California over their lines. In the second place, the provisions as to discrimination contained in the Act relate to discrimination between shippers and to the giving an undue and unreasonable preference and advantage to one shipper over another, and do not and were never intended to relate to a preference as between a carrier and a shipper. No such situation is contemplated by the Act, and even if it was possible to spell out of the circumstances of this case such a preference and advantage to the carrier, it would not come within any prohibition of the Act of Congress.

The Interstate Commerce Commission in its opinion seems to proceed upon the theory that the right of routing might possibly be exercised by a carrier in such a way as to result in discrimination in favor of one shipper to the prejudice of another. In other words, they claim that while the railroads have not in the exercise of this right actually discriminated, yet it might be possible for them to so discriminate, if they desired to do so; but this does not seem to have been the question before the Commission. Its duty was to decide whether there had been any undue preference of one shipper over another by

the exercise of the routing rule, and not whether it would be possible to exercise the privilege of routing in such a way as to result in discrimination.

At p. 76 of the Record, it is stated in the opinion of the Commission that:

> "It is not a sufficient excuse for the practice under discussion to say that the first carrier's control of the routing beyond its rails must be so exercised as not to unduly discriminate. The granting of a given routing to one and the denial of the same to another is itself an unjust discrimination."

There is no evidence in the record that one shipper asked for a routing which was granted, and that another shipper asked for the same routing and it was denied to him. On the contrary, the testimony is that whenever any shipper asked for a routing it was invariably given to him, except in the special case which was not brought in good faith, and which was refused by the railroads upon that ground.

DECISION OF THE COURT BELOW.

The reasoning of the Commission was disregarded by the Court below, but its order was

sustained by Judge WELLBORN upon the theory that the routing provision contained in the special citrus fruit tariff was in itself a contract for the pooling of freight. At page 1034 of the Record he says:

> "The question here presented is * * * whether or not the routing provision, which the evidence adduced on final hearing shows, and the answers of the defendants admit to have been part of the agreement between the defendants themselves and their eastern connections, and pursuant to which their subsequent joint tariffs were filed with the commission, is itself a contract or combination for the pooling of freights."

Again, at page 1039, Judge WELLBORN says:

> "There is no escape from the conclusion, it seems to me, that said routing contract is a pool, and the remaining question is whether or not it is such a pool as the commerce act makes unlawful."

Afterwards, in speaking of the case of *United States v. Freight Association*, 166 U. S., 290, he says:

> "No such situation it should be borne in mind was before the court then as is here

presented, namely, a traffic pool or more specifically, a contract for the distribution of freight between different and competing railroads by arbitrary routings of the initial lines regardless of the wishes of shippers."

At page 1045, he goes on to say:

"After careful consideration of the subject, I am of opinion that any contract, agreement or combination between different and competing railroads, whereby the volume or quantity of freights each or any shall receive for transportation is to be determined by or through any conventional means or agency, which was intended to, and does suppress competition either in rate or service or competition directly addressed to shippers, is a traffic pool, within the meaning of section 5 of the Interstate Commerce Act, and that the routing contract here in controversy does so apportion freights among the defendants' eastern connections, and is essentially such a pool."

It is plain that the court below puts its decision squarely upon the ground that the right of routing was a traffic pool, but just how it was a traffic pool or how the joint tariff with the routing provision in it was any more a violation of the 5th

section of the Interstate Commerce Act than a joint tariff without such clause is not very clear.

The Court below was very particular to point out, that the question before it was

> "Not whether there was a tonnage pool between the connecting carriers, to which the defendants, although they promoted its ends through the use of the routing rule, were not parties, as was found by the commission, nor whether there was a traffic pool between the defendants, to which the connecting carriers were not parties, which was one of the issues the commission for lack of satisfactory evidence, retained for further investigation." (Record, p. 1034.)

We must confess that it is very difficult for us to follow the reasoning of the lower Court. It is said by it that the routing provision of the joint tariff is itself a contract or combination for the pooling of freight, and in the same breath it says that in the proceeding before it there was no question as to whether there was a tonnage pool between the connecting carriers or a traffic pool between the initial carriers. If, as a fact, there was no tonnage pool either between the initial carriers or the connecting carriers, it is a

little difficult to see how the offer made by the appellants to the public to carry oranges beyond their terminal points, if they do the routing, can be twisted into a combination for the pooling of freight. Why should an arrangement, perfectly innocent on the face of it, and one permitted at common law, be deemed a combination for the pooling of freight, when it is conceded that no pooling of freight resulted therefrom ?

In the first place, what is this combination? What railroads are parties to it? Who is it between? A combination between the initial lines on the one side and the connecting lines on the other (if there were any such combination, which we deny) would certainly not violate the act, as that requires the contract to be between competing lines and the Lake Shore or the Pennsylvania roads can hardly be called competitors with the Southern Pacific. The portion of the 5th Section of the Commerce Act with which we are now concerned reads as follows :

> "SECTION 5. That it shall be unlawful for any common carrier subject to the provisions of this act, to enter into any contract, agreement or combination with any other common carrier or carriers for the

pooling of freights of different and *competing* railroads."

As we have seen, the offer of the initial lines to the public to take freight for eastern points, if they may have the routing of it, can hardly be called a contract between competing roads, even if it was possible to construe such an offer as an agreement between the appellants and the eastern lines. We are therefore left in our search for the parties to this combination to the eastern lines themselves. Now as to these lines the record is absolutely devoid of any evidence or any suggestion of evidence that there was any combination or agreement between any of them in regard to the exercise of routing by the initial carriers. It is not a matter about which any argument can be made. The fact is there, that in this long litigation it has never occurred to any one to suggest, much less to offer any evidence upon the point, that the eastern lines had entered into an agreement or combination between themselves as to the routing by the initial carriers.

These eastern lines are not parties to this proceeding. They have never had their day in

court. The point was raised by demurrer that they were necessary parties and the demurrer was overruled. It is certainly an extraordinary situation if railroads not parties to a proceeding can be held to have violated the Commerce Act, when the defendants in such proceeding are held not to have done so. That is to say if the routing rule was a combination between the eastern lines such as is prohibited by the Act, then such eastern lines ought to have been parties to this proceeding and the case should have been dismissed upon the ground that they were indispensable parties in whose absence the court would not proceed.

Of course, the initial carriers would not have any interest in any such arrangement. No motive has been suggested for their being interested in any such agreement or combination. Their carriage was the same in any event. When shipped over their lines they would naturally carry the oranges to their own terminals, and the routing rule had no practical application, except to the carriage of the oranges beyond the terminals of the initial carriers.

In the final decree (Record, p. 112), after referring to the special joint tariff relating to citrus

fruits which has been filed by the initial carriers and their immediate connections, it is stated:

> "That said agreement and tariff are now in force and observed by all of the parties thereto, and that the said routing provision so agreed upon and embodied in said tariff is an agreement and combination for the pooling of freights of different and *competing* railroads and violative of section 5 of the commerce act mentioned in said bill of complaint."

As we understand this decree, it was intended to mean that the joint tariff was filed as part of an agreement between the initial lines and the eastern roads, and that it was understood at the time of filing what traffic would be given to each of the eastern lines, parties thereto.

The evidence, however, does not in any way sustain this view of Judge WELLBORN, for the following reasons:

1. The tariff which was filed by the initial lines containing the provision as to the exercise of the routing privilege by the initial carrier, was not when filed, agreed to by the eastern lines. It was signed only by the Southern Pacific Company, the Atchison System, and their

immediate connections, viz., the Union Pacific and the Texas Pacific, and it was especially provided that the through rate would apply over the connecting roads only in the cases in which their traffic officials should "certify their concurrence therein to the Interstate Commerce Commission" (Record, p. 457). In other words, the parties signing this joint tariff were all on one side of this alleged "contract, agreement or combination." They had no interest whatever in this traffic pool. The oranges consigned to eastern points would go over their lines, whether there was a traffic pool or no traffic pool. The tariff, therefore, containing this objectionable provision as to routing which Judge WELLBORN calls a traffic pool, was not agreed to by the eastern lines. It was necessary that they should so agree in order to work out a violation of the fifth section of the act. There must be an agreement by one common carrier with another competing common carrier for the pooling of freight in order to conflict with the requirements of the Commerce Act. The common carriers who signed this tariff were all on one side and are in effect one party. The other necessary party in order to make this joint tariff a contract or combina-

tion were the eastern lines, but they did not sign this tariff and it only applied to them in case their traffic officials certified their concurrence therein to the Interstate Commerce Commission. Therefore, this special citrus fruit tariff could hardly be called a combination between the initial lines and the eastern lines for the pooling of freights over the eastern lines, when the eastern lines were not parties thereto.

Even if there had been such an agreement (we unqualifiedly deny that there was) we do not see how it could be deemed a violation of the Act, as the eastern lines and the initial carriers can hardly be called competing. To violate the Act the agreement must be between competing carriers.

2. The testimony is all one way upon the point that no agreement of any kind whatever was had with the eastern lines. As to this Mr. Paul Morton, who was at the time of his examination the Second Vice-President of the Atchison System, says (Record, p. 126):

> "Q. But so far as any agreement with your eastern connections is concerned, or any understanding that any eastern con-

nection shall have one per cent. or fifty per cent., what is the fact?

A. There is absolutely no agreement whatever of any kind with any of our eastern connections. * * *

Q. As you state that there is no understanding that you know of between the initial carriers or the Santa Fe Companies and Southern Pacific and their eastern connections, I will ask you whether there is any agreement or understanding, if you know, between the eastern connections themselves as to a division of this business?

A. I think not. Otherwise we would have been advised of it and have been asked to help them carry it out as far as possible, and we have had no such request."

Mr. William A. Bissell, the Assistant Traffic Manager of the Atchison System, testifies at p. 879 as follows:

"Q. Now, Mr. Bissell, it is suggested in the opinion of the commission that this routing that you have assumed control of was for the double purpose of making a pool with the eastern connections? * * * I will ask whether there is any traffic pool between the initial carriers and their eastern connections?

A. There is absolutely none. That is indicated I think in these telegrams. These men were satisfied that it was a good thing to do if they got a fair share of the business.

Q. Has there ever been an understanding with those connecting lines as to whether they would get one per cent. or ninety-nine per cent. or any other per cent.?

A. There has never been any understanding with those roads as to what they would receive, beyond the statement that they would be given fair treatment; and, as *a matter of fact there is not one of them that to-day knows what percentage of the business they get.*

Q. Then you mean to say there is no tonnage pool?

A. There is no tonnage pool. * * *

Q. Well, that is what I mean, that there was not a tonnage pool with your eastern connections based upon this routing?

A. Absolutely no. It never was thought of."

In the testimony of Mr. William Sproule, the Freight Traffic Manager of the Southern Pacific Company, he says at page 919, as follows:

"Q. Now Mr. Sproule was there any relation of any kind between the system of

routing under the exercise of the right of the initial carrier to route as made effective by the tariff of January, 1900. Was there any relation between that condition of things and the existence of any tonnage pool among any connections whatever of yours?

A. None whatever, sir. That tonnage pool is a myth from the beginning.

Q. Did it ever have any existence?

A. It had no existence. What do you refer to now? To our connections?

Q. To your connections?

A. It had no existence whatever. Let me explain. As I have heard this stated in various ways here, the suggestion has been made that we were a party in some way to a tonnage pool between our immediate connections. Now, our immediate connections —am I correct?

Q. Or any connections ?

A. Well, any connections. Well, we haven't got any pool with any connection."

W. G. Barnwell was examined in regard to the distribution of the freight among the Eastern lines and testified that these distributions were made without the Eastern lines knowing what percentage they were to get. He says at page 443, as follows:

"Q. Who makes these distributions? Who figures them out?

A. Well, it is done principally by Mr. Chambers, with my assistance.

Q. The General Freight Agent?

A. Yes, sir.

Q. Does he or do you and he do it alone? *By that I mean do you make these distributions without consulting the connecting carriers to whom the distributions are to be made?*

A. *Yes, sir, we do.*

Q. *Do your connections know what these distributions are?*

A. *No, sir; up to this time they do not.*

Q. *Do you vary these distributions from time to time?*

A. *Yes, sir. We are not obliged to follow that distribution at all. That is merely as a guide.*

Q. Is the distribution as a matter of fact followed exactly?

A. No, sir. It is not."

Again, at page 445, he says:

"Q. Now, although this has been covered by different interrogatories, I want to ask you directly whether there exists, or has ever existed since 1900, when the right

to route citrus fruit was reserved by the initial carriers involved in this case, any understanding of any sort with connecting carriers in any part of the United States or Canada, or with car companies, their representatives or agents, about the amount of business that should be distributed to any railroad line or car line?

A. No, sir, most emphatically no.

Q. Or as to the division of freight receipts from citrus traffic?

A. Only as governed by what is known as our division sheet.

Q. The same as applies to other traffic?

A. The same as applies to other traffic."

The foregoing testimony is all that is to be found in the Record upon this point, and in the face of such evidence, given without any qualification by men of high standing, it is difficult to see how a combination between the eastern lines and the initial carriers for the pooling of freight can be said to have resulted from the filing of the special citrus fruit joint tariff.

The essential element of a violation of the pooling clause of the Interstate Cammerce Act is an agreement or combination between the carriers for the physical division of the freight.

The tariff itself cannot be deemed such an agreement or combination, because it was not signed and agreed to by the eastern lines. That there was no other arrangement between the initial carriers and the connecting lines prior or subsequent to the special citrus tariff is shown by the undisputed evidence above set forth. It is therefore not plain how this clause relating to the right to route contained in such tariff can be deemed to be an agreement or combination between the appellants and the eastern lines for the purpose of creating a traffic pool, especially as any such alleged pool could be of no interest whatever to the initial lines, the business of which would be unaffected by the existence or non-existence of such a pool.

AS THE GROUNDS OF THE DECISION OF THE COMMISSION AND OF THE COURT BELOW ARE BOTH UNTENABLE, IT WOULD SEEM THAT THE INTERSTATE COMMERCE ACT DOES NOT DEPRIVE THE CARRIER OF ITS COMMON LAW RIGHT TO ROUTE THROUGH FREIGHT BEYOND ITS OWN LINE.

If we are correct in our contention that the exercise by the carrier of the right of routing through freight beyond its own terminals does

not create any undue or unreasonable prejudice against any shipper in favor of any other shipper as the Commission holds, and that such right of routing is not a traffic pool as the lower court decided, then we come to the question of whether the exercise of this right violated the Interstate Commerce Act in any other respect.

There are in this case three important points which are practically conceded.

1. Prior to January 1, 1900, the eastern lines all paid rebates to the private car lines in return for the routing of oranges by the car lines.

2. The routing rule was adopted by the initial carriers solely for the purpose of breaking up this rebate system.

3. The rebate system was broken up and no rebates have been paid since January 1, 1900.

It is agreed by the Court below and by the Commission that the practice of paying rebates is a great evil, "was violative of the commerce act and cannot be too strongly reprobated" (Record, p. 1025). It is also admitted to be a good thing to have it broken up, but they say that the means employed were not proper, and that a good end is not to be reached by improper and unlawful means.

The position of the appellants is that the means employed to break up the rebate system were not only not a violation of the Interstate Commerce Act, but were perfectly legitimate and proper from every point of view, and open to the closest scrutiny and investigation. To fully appreciate and understand the situation it will be necessary to refer in considerable detail to the testimony contained in the record, and we will endeavor to show by extracts from this testimony the situation prior to the enactment of the routing rule, the reasons why the routing rule was adopted and the situation after the routing rule.

SITUATION PRIOR TO JANUARY 1, 1900.

Prior to January 1, 1900, the rebate system had increased to such an extent that practically no shipment of oranges went forward without private car lines receiving rebates thereon. It became a matter of public notoriety because of the fact that private car lines made their demands openly, believing that they were not subject to the provisions of the Interstate Commerce Act, and could receive such rebates without risk. How common the practice had become is best shown by the testimony of the shippers themselves.

A. F. Naftzger, who was the President and Manager of the Southern California Fruit Exchange, one of the complainants in the original proceeding before the Interstate Commerce Commission, says at page 804 of the record, as follows:

> "MR. HUNSAKER: What car line made those allowances or discounts prior to 1899?
>
> MR. NAFTZGER: All the car lines to the best of my recollection that we ever used in our businsss."

Again at page 811, Mr. Naftzger testifies as follows in answer to members of the Commission:

> "COMMISSIONER CLEMENTS: When did this rebating practice begin?
>
> MR. NAFTZGER: I don't know, sir. It seems to have been here when I came.
>
> COMMISSIONER CLEMENTS: How far back? When was that?
>
> MR. NAFTZGER: Well, I think my first experience must have been along about 1892 or 1893.
>
> COMMISSIONER CLEMENTS: It was in vogue here then and has been ever since.
>
> MR. NAFTZGER: Yes, until now.
>
> COMMISSIONER CLEMENTS: Until this year? After this conference you testified about; is that when it ceased?

MR. NAFTZGER: No, sir; there has not been anything this year; not within sight of me at least.

COMMISSIONER CLEMENTS: Did it stop before that conference was held or afterwards?

MR. NAFTZGER: There had been no refrigeration before that.

COMMISSIONER CLEMENTS: Before this season?

MR. NAFTZGER: No, sir.

COMMISSIONER CLEMENTS: So it has not applied to this year as far as you know?

MR. NAFTZGER: No, sir; not so far as I know.

COMMISSIONER CLEMENTS: When it was in vogue what determined whether the rebates should be 10 per cent., 15 per cent., 20 per cent. or 25 per cent.? Was there any rule about it?

MR. NAFTZGER: *I suppose it was the bearing-down qualities of the man who was getting it.* I don't know.

COMMISSIONER CLEMENTS: Was there any uniformity about it?

MR. NAFTZGER: I don't think there was. It was not an open reduction.

COMMISSIONER CLEMENTS: Did some people get it and some not?

MR. NAFTZGER: *I think pretty nearly everybody got it that went after it.*

COMMISSIONER YEOMANS: *Did you always go after it.*

MR. NAFTZGER: *I did.*

COMMISSIONER CLEMENTS: Well, that was not governed by the amount of the charge that was fixed by the territorial groups?

MR. NAFTZGER: Yes, sir, it was; there was a larger allowance on the long hauls than on the short hauls.

COMMISSIONER CLEMENTS: Was it a percentage in all cases?

MR. NAFTZGER: No, sir; it was generally an even proposition of $5, $10 or $15, as the case might be.

COMMISSIONER CLEMENTS: On a car?

MR. NAFTZGER: Yes, sir; on a car.

COMMISSIONER CLEMENTS: How was it arranged for—by an understanding when the shipment was made that it was to be paid?

MR. NAFTZGER: An understanding with the car line at the beginning of the season that the use of those particular cars would secure that allowance on the refrigeration.

COMMISSIONER CLEMENTS: The understanding was had between the shipper and the car line?

MR. NAFTZGER: Yes, sir.

COMMISSIONER CLEMENTS: Was it taken off before the freight was paid?

MR. NAFTZGER: No, sir; it was in the shape of a refund after the tariff had been paid.

COMMISSIONER CLEMENTS: Why was it done that way?

MR. NAFTZGER: Well, that is the only way in which it could be done and not make an open reduction. If it were in the shape of a reduction of the tariff charge in the beginning, of course that would, in effect, be making an open rate.

COMMISSIONER CLEMENTS: Well, the effect was the same?

MR. NAFTZGER: *It was; but it was not known to all shippers. Some of them got caught on the full rate, I presume.*

COMMISSIONER CLEMENTS: What was the objection to all shippers knowing it?

MR. NAFTZGER: I suppose the car lines did not want to give it up when they did not have to?

COMMISSIONER CLEMENTS: Was secrecy always enjoined about it by the car lines?

MR. NAFTZGER: Yes, sir; it was generally a confidential proposition.

COMMISSIONER CLEMENTS: Who was it paid back by?

MR. NAFTZGER: The car lines.

COMMISSIONER CLEMENTS: Over all the roads?

MR. NAFTZGER: The railroads did not have anything to do with it, so far as the shipper was concerned.

COMMISSIONER CLEMENTS: No matter what road it went over?

MR. NAFTZGER: No, sir, I said there was a time when the rebate on the refrigeration was affected somewhat by the routing, but that has not been the case for several years.

COMMISSIONER CLEMENTS: *Was it paid by the railroad or car line?*

MR. NAFTZGER: *By the car line;* but there was a time, as I have stated before, when the car lines, or some of them, would pay something more back if the shipment traveled over certain lines.

COMMISSIONER CLEMENTS: Do you mean certain initial lines or certain intermediate lines?

MR. NAFTZGER: That usually had relation to the connecting lines; not the initial lines.

COMMISSIONER FIFER: Did the car com-

pany dictate the terms to the eastern connections?

MR. NAFTZGER: I assume they did, or to a certain extent. I do not personally know that."

Of course, clear and definite testimony of the number of times rebates were paid and the amount of them is not possible of ascertainment for the reason that accounts of such matters were not kept, as Mr. Naftzger very frankly stated in answer to a question from a member of the Interstate Commerce Commission as to why he did not have books showing the amounts received by him as rebates, when he said (Record, p. 816):

"Well, it was one of those accounts that was not of interest as a relic."

Mr. C. E. Maud, the President of the Consolidated Forwarding Company, the other complainant before the Interstate Commerce Commission in the original proceeding, admits quite as frankly the custom of rebates. At page 818 of the record, we find this testimony:

"MR. HUNSAKER: State what the practice has been of those car lines with reference to refunding a part of the charges made for refrigeration.

MR. MAUD: Well, as long as I have been in the business there has been a refund.

MR. HUNSAKER: To what extent?

MR. MAUD: Well, from a very small percentage up to 25 per cent. of the refrigerator charges.

MR. HUNSAKER: How much per car?

MR. MAUD: Well, it might be at the flat rate of say $15 per car.

MR. HUNSAKER: To what points?

MR. MAUD: I say a flat rate that would cover all shipments.

MR. HUNSAKER: Do you mean an average?

MR. MAUD: Yes.

MR. HUNSAKER: Well, what is the maximum amount which you have been allowed in the way of a refund or rebate by refrigerator lines?

MR. MAUD: $35.

MR. HUNSAKER: And the minimum?

MR. MAUD: $5.

MR. HUNSAKER: To what points have you been allowed as high as $35?

MR. MAUD: Why, that was east to the Atlantic seaboard.

MR. HUNSAKER: Now all of these companies made you that allowance prior to the this season?

MR. MAUD: No.

MR. HUNSAKER: Well, which of them made the allowance?

MR. MAUD: They all made some allowance."

Samuel H. Westfall, another witness before the Interstate Commerce Commission, who is engaged in the fruit shipping business, testified very frankly that the rebates were paid by the private car lines for the privilege of routing the oranges, and said at page 829 of the record:

"MR. HUNSAKER: Did you receive any rebate or allowance on those rates from the car lines?

MR. WESTFALL: Two years ago there was an additional allowance, small allowance.

MR. HUNSAKER: What was it?

MR. WESTFALL: It was paid for the privilege of dictating the route."

Again at pp. 830 and 831, Mr. Westfall testifies as follows:

"MR. HUNSAKER: Did you receive those allowances when there was no refrigeration?

MR. WESTFALL: We did.

MR. HUNSAKER: When you shipped under refrigeration did you receive these

same allowances and also an additional allowance on the refrigeration charge?

MR. WESTFALL: Most of the time we received this same amount regardless of refrigeration, but a part of the time we received additional.

MR. HUNSAKER: Why, Mr. Westfall, did you seek and receive these rebates from these private car lines?

MR. WESTFALL: For the purpose of being as nearly as possible upon an equal basis with our competitors. It was necessary in order to compete to accept these additional earnings.

MR. HUNSAKER: Can you state how much you received from this arrangement with Mr. Hosbury, in the shape of rebates?

MR. WESTFALL: It would simply be a sort of an estimate; I should say we received several thousand dollars, perhaps. * * *

MR. LAMBERTSON: What salary did you pay Hosbury?

MR. WESTFALL: I paid him no salary.

MR. LAMBERTSON: How did he get his pay?

MR. WESTFALL: I presume that he considered that the privilege of making the route over which our cars should pass would be sufficient for his trouble.

MR. LAMBERTSON: You did not pay him anything?

MR. WESTFALL: Nothing.

MR. LAMBERTSON: Yet he was your general traffic manager without a salary, and you employed him to work the different car lines and railway companies in your interest and get as many rebates as possible?

MR. WESTFALL: I did not.

MR. LAMBERTSON: You did not?

MR. WESTFALL: I did not.

MR. LAMBERTSON: Did he come to you or you go to him?

MR. WESTFALL: He came to me."

Another fruit shipper, Mr. F. B. Fay, testifies as follows at p. 833 of the record:

"MR. HUNSAKER: Now have these private car lines which you have mentioned been accustomed to make allowances or rebates to you from their regular tariff rates for refrigeration?

MR. FAY: Yes, sir.

MR. HUNSAKER: To what amount, or in what amount?

MR. FAY: Why, it has varied different years and to different points.

MR. HUNSAKER: Well, last year, what

was the allowance made to you, or rebate on refrigeration charges?

MR. FAY: $25 per car.

MR. HUNSAKER: $25 per car all around?

MR. FAY: On refrigeration charges.

MR. LAMBERTSON: On refrigeration alone?

MR. FAY: Yes, sir.

MR. HUNSAKER: What allowance, if any, was made where the fruit was not moved under refrigeration?

MR. FAY: We had a rate to different points. It varied from $10 to $25, I believe."

That very little of the rebates received by the car lines were ever received by the small shippers, is very apparent from Mr. Fay's testimony at page 835, where he says as follows:

"MR. HERRIN: *Did you not in any case ship fruit belonging to other people?*

MR. FAY: *Yes, I think possibly there may have been some small shipments.*

MR. HERRIN: *What did you do with the rebates in this case? Turn it over to the shippers?*

MR. FAY: *No sir, I did not.*

MR. HERRIN: *Kept it yourself?*

MR. FAY: *Yes, sir.* * * *

MR. HERRIN: *Why did you not turn it over to the shipper in such a case?*

MR. FAY: *They were very small shipments and unimportant.*

MR. HERRIN: Such a little thing! it was unimportant. Then the rebate in that instance, where you shipped for others and took the rebate, you did not take the rebate in that case to put yourself on an equality with your competitors, did you? You took it to get something more than that?

MR. FAY: I don't know what my competitors were doing, whether they were retaining it in a like instance or not.

MR. HERRIN: Why did you not decline to receive a rebate in the case where you were shipping for somebody else? Why did you not content yourself with going on and not receiving rebates in these cases?

MR. FAY: Of course, these small shipments went along with the others.

MR. HERRIN: Then why did you exact the rebate in this case?

MR. FAY: No exaction.

MR. HERRIN: They forced them on you.

MR. FAY: They offered them to us.

MR. HERRIN: You took them, and did not turn them over to the shipper?

MR. FAY: No, sir.

Again Mr. Fay has some further interesting testimony on this point at pages 838, 839 of the record:

"COMMISSIONER CLEMENTS: You have got rebates in all cases, whether refrigerated or not?

MR. FAY: No, sir; not in all cases. A good many cars were thrown out.

COMMISSIONER CLEMENTS: Well, as a general rule you did, did you?

MR. FAY: There were a good many cars to non-competing points that were thrown out.

COMMISSIONER CLEMENTS: On those you got no rebates?

MR. FAY: No, sir.

COMMISSIONER CLEMENTS: Now, in cases where it went under refrigeration, who collected the refrigeration charge, the railroad company or the car line company?

MR. FAY: Over the Santa Fe road the railroad collected the refrigeration. Shipments over the Southern Pacific were collected by the car lines.

COMMISSIONER CLEMENTS: Well, in case it went without refrigeration, there was no charge of that sort?

MR. FAY: No, sir; I believe not.

COMMISSIONER CLEMENTS: What did you say?

MR. FAY: No, sir.

COMMISSIONER CLEMENTS: Was not?

MR. FAY: No.

* * * * * * * *

MR. FAY: Yes, sir.

COMMISSIONER CLEMENTS: And that was paid by the car line company?

MR. FAY: Yes, sir.

COMMISSIONER CLEMENTS: Do you know from what source they obtained money to pay rebates on a shipment when they received no compensation at all on that shipment? Where it went without refrigeration they collected nothing, and yet they paid $15 or $17?

MR. FAY: I do not know from what source they obtained it.

COMMISSIONER CLEMENTS: Did they ever tell you?

MR. FAY: No, sir.

COMMISSIONER CLEMENTS: You say your profits are less this year by the amount of the rebates than they were last year?

MR. FAY: I would presume so.

COMMISSIONER CLEMENTS: I don't want you to answer the question without due consideration, and without understanding;

but I want to ask you next whether you pay any more to the people from whom you buy when you get rebates than when you don't get rebates?

MR. FAY: *No, sir.*

Mr. Leland Lyon, another fruit grower and shipper originally examined in behalf of the petitioners, testified as follows (pp. 842, 843):

"MR. LAMBERTSON: Did you get any rebates from anybody but the car lines?

MR. LYON: My understanding was it came all through the car lines.

MR. LAMBERTSON: Who did you get it from?

MR. LYON: The people representing the car lines.

MR. LAMBERTSON: Well, did you get anything from a man by the name of Hosbury?

MR. LYON: I think we did some several years ago; not for several years. * * *

MR. LAMBERTSON: Did any agents of the railway companies come out here from the East and offer you anything?

MR. LYON: Not to any extent, I think. There have been some, yes, sir, in some small ways.

MR. LAMBERTSON: If you would route over particular roads?

MR. LYON: We have been asked to.

MR. LAMBERTSON: You have been asked to?

MR. LYON: Yes, sir.

MR. LAMBERTSON: Will you swear that you never got anything from eastern roads direct?

MR. LYON: I think we got, sometimes, a small amount from some eastern roads, but never to any extent. It was not our custom. *Our business was done almost wholly in that line through the car lines or their representatives.*

Mr. Earl, President of the Continental Fruit Express, and of the Earl Fruit Company, testified at page 847 of the record as follows:

COMMISSIONER CLEMENTS: Is it a fact that your company has been allowing some of these rebates to shippers where you did not do any refrigeration at all, provided they would allow you to control the routing?

MR. EARL: There was a demoralizing warfare between these car lines; there was patent litigation pending between them, and bitter feeling, and they resorted to all man-

ner of means to hurt each other, and we gave up to shippers, in order to keep our cars moving, $15 a car, say. We didn't figure what it came out of. It came out of our revenue.

COMMISSIONER CLEMENTS: You gave about $15 a car when you were getting about $25 mileage?

MR. EARL: Yes, sir.

COMMISSIONER CLEMENTS: And then you would pick up more mileage east of here?

MR. EARL: We would simply have to go to some of our friends to help us out.

COMMISSIONER CLEMENTS: What railroads have been paying you rebates in this way within the last year?

MR. EARL: I cannot designate any routes from my own knowledge except this Hosbury route, the Clover Leaf route. Two years ago he offered us inducements to route business that way.

COMMISSIONER CLEMENTS: In all this scramble for business after it leaves these initial roads, resulting in all these various ways of allowing concessions for the business, under one name or another, does it all fall on the Clover Leaf?

MR. EARL: No, sir; I do not think so. I think the Clover Leaf was more flagrant

in demoralizing the situation than any other line.

COMMISSIONER CLEMENTS: But can't you name any other line with whom you had such transactions?

MR. EARL: No, sir; I cannot.

COMMISSIONER CLEMENTS: Because you don't know?

MR. EARL: Not from my own knowledge. I happen to know something about the Clover Leaf man personally.

COMMISSIONER CLEMENTS: So you have not only the refrigerator charges, but the contract mileage and various other mileages, wherever you could get it, from which to get money to pay the rebates that you have been paying here to shippers?

MR. EARL: We took it out of our earnings. I would not say one source or another. There were several sources of earnings."

Mr. Arthur Gregory, a fruit grower and shipper of Redlands, California, after being asked in regard to the representatives of the eastern lines which called upon him for business, testified as follows (pp. 850–851):

"Q. Did they offer you any rebate?

A. The railroad company?

Q. Any of these agents?

A. The car lines?

Q. These solicitors for the eastern lines, soliciting your business and offering you these things?

A. Some did and some did not.

Q. Did you ever accept what was offered that way?

A. Sometimes I did.

Q. *Why did you refuse it?*

A. *Because it was not enough.*"

Again, at page 852, he further testifies:

"Q. *From whom did you get these rebates, from the car lines or the railroad?*

A. *Car lines.*

Q. About what amount?

A. $10 to $25.

Q. *Did you get those rebates from the car lines now operating here in this traffic?*

A. *Yes, sir.*

Q. *All of them?*

A. *Yes, sir.*

Q. *Get it from all of them?*

A. *Yes, sir.*"

It is very evident that the petitioner in this proceeding before the Interstate Commerce Commission was not willing to make a full disclosure of this rebate practice for its President, Mr. Naftzger, testifies as follows at page 859:

"Q. Mr. Naftzger, I will ask if you have now told us fully and made a complete disclosure of all remuneration or money that has come to you from Mr. McIntosh, directly or indirectly, by reason of any car line transaction whatsoever? Why do you hesitate?

A. *No, I have not.*

Q. What else was there?

A. *I don't intend to tell.*

Q. You refuse to answer?

A. You can put it that way if you like."

The foregoing extracts from the record show the situation and the demoralization in the orange traffic from California to eastern points prior to the routing by the Railroads. The evidence of the railroads is in entire accord with the testimony given by the various witnesses for the petitioners, and is perhaps as well expressed as it can be in the letter of President Ripley of the Atchison System to Mr. Maud, the President of the Consolidated Forwarding Company, one of the petitioners, dated January 15, 1900, set forth in full at page 820 of the record. He there says:

"Two years ago there were in use, in the handling of the citrus fruit business of Cali-

fornia some four or five private car lines, in addition to the cars owned by this Company. It is an open secret that these lines were in the habit of soliciting from our eastern connections a money consideration in return for their alleged influence upon the routing of business, and when such considerations were obtained it was the custom of those lines to divide the amount to a greater or less extent with the shippers of the fruit. In some cases the owners of the car lines were also shippers of fruit, in which case whatever concessions they might be able to obtain from our eastern connections resulted to their advantage. The situation was chaotic, and resulted, as I believe, in a detriment to all concerned. It was certainly burdensome to the railroad companies, the tendency being to crowd into California more cars than could be used, as well as to compel us to use certain classes of cars to which there were serious objections."

Mr. Paul Morton, at that time the Vice-President of the Atchison System, speaks about the giving of rebates as follows (p. 122):

"Q. Do you mean to say that under the order of things that you describe one shipper would get a lower rate than another?

A. I mean to say that under the condition of things that existed to January 1, 1900, there was a great discrimination, and in nearly every instance Mr. Earl received better rates than any of his neighbors did.

Q. And am I to understand from the statement that you have made as to how Mr. Earl and the other car lines disposed of the business, that they controlled the routing?

A. The routing was left in their hands largely by the people whose business they handled.

Q. That is to say, the shippers turned over their business to the car lines for a consideration?

A. Yes.

Q. The consideration being this rebate?

A. Being the portion of the rebate that Mr. Earl received. He made the best terms he could with them.

Q. With the shippers?

A. Yes. In some instances the shippers got possibly all there was in it. In other cases they got a small portion of what Mr. Earl received, but they were mad and they did not like it. They said it was placing their competitors on a basis that was not fair to them. All of them were indisposed

to accept that situation, and it was very unsatisfactory to our Company, and it was to them.

Q. Then do I understand that after making the best terms he could with the shippers for a consideration, he went to the connecting carriers and made the best terms.

A. Sold his business to the highest bidder.

Q. And sent it over such connecting carrier as would do the best?

A. As would do the best.

Q. And not over the connecting carrier that some shipper might want to have used?

A. That is right. In some instances it may be that some of the larger shippers in California had their own arrangements outside of Mr. Earl.

Q. But generally speaking you have described the situation?

A. *Generally speaking, I have described the situation. And I want to add that the chief reason or chief objection on the part of shippers to our taking the routing in our own hands was that they were no longer able to sell the business and get rebates.*"

Mr. William A. Bissell, Assistant Traffic Manager of the Atchison System, testifies as follows, at pages 864, 865:

"Q. By whom were these rebates paid, if you know?

A. They were paid by the car lines.

Q. And to whom?

A. Oh, everybody.

Q. Well, I mean, to what class of people, if there was a class?

A. To the people that controlled the business. Sometimes that was the people that owned it and sometimes it was not.

Q. You mean that sometimes the shippers controlled the business and sometimes they didn't?

A. That is what I mean.

Q. Well, do you know who controlled the business when the shipper didn't?

A. Why, frequently the parties to whom it was consigned controlled it.

Q. Do you know whether the car lines ever controlled it?

A. Yes, they did control a good deal of it.

Q. In what way, can you tell?

A. By payment of rebates.

Q. Do you mean by that that the shippers gave up the routing as a consideration of receiving rebates?

A. Yes, sir; that is just what I mean.

Q. And do you know that to be the case—to have been the case.

A. I do."

Again, at page 866, he says:

"Of course, you understand that the rebate—the result of the rebate system is that when it was in vogue that we all gave away so much money and got down to a parity; in the end, we were no better off than we were on the start."

In speaking of the great dissatisfaction with the rebate system, Mr. Bissell said at page 868:

"Q. Well, what was the result of the practice as to being satisfactory or otherwise?

A. Well, it was very unsatisfactory. It was unsatisfactory to everyone; unsatisfactory to the lines between here and Chicago, to the initial lines that originated the business, and also to the connections.

Q. Did your eastern connections express dissatisfaction about it?

A. They expressed dissatisfaction to me every time I talked to them; but they were afraid to take any steps that would debar them from this business. They felt that

they had to, in order to maintain their prestige, carry a certain amount of this business.

Q. Well, what do you mean by that?

A. Well, any man that is at the head of the traffic department of a railroad does not want his competitors to get away with all the orange business, or all of any other kind of business. He wants his share, even if he does not make any money out of it.

Q. So that they would take it notwithstanding that the rebates might reduce the profits to little or nothing?

A. Yes, sir."

Mr. Edward Chambers, General Freight Agent of the Atchison System, gives in his testimony a very clear description of the situation prior to the exercise of routing by the initial carriers and he says at pages 890, 891, 892, as follows:

"Q. Well, do you know anything about the giving of rebates that was in practice before January, 1900, in southern California on citrus fruits?

A. Rebates were generally paid prior to January.

Q. By whom were they paid and to whom?

A. Generally by the car lines to the shippers.

Q. How many car lines were there?

A. Oh, there was—in December, 1899, I think there were four private car lines, the Continental Fruit Express, and the Fruit Growers Express, and the Santa Fe Refrigerator Line and the Overland Fruit Despatch, as I remember it.

Q. To whom did the car lines pay these rebates?

A. They paid them to the shippers.

Q. And do you know where they got the money?

A. Got the money from the railroads.

Q. In what way, if you know?

A. Well, generally the plan was to get an excess mileage, that is, additional mileage allowance. The standard mileage for private car lines is three-quarters of a cent west of Albuquerque. That is speaking for the Santa Fe. And east of Albuquerque it was one cent a mile. This allowance was made to all private car lines handling perishable freight. Now, the lines east of Ogden and El Paso paid one cent per mile. The car lines would arrange with the railroads for an allowance, say, of a cent and a half a mile, and agree, in consideration, they would give the railroads a certain amount of business. And out of that excess mileage allow-

ance they would pay the shipper. They would go to the shipper and contract with the shipper for the routing of his business, and route the business over the lines with whom they had arrangements for additional mileage.

Q. Then, the railroad company would pay to the car line an excess per mile on the mileage of the cars ?

A. Yes, sir.

Q. And that money was used by the car line to pay rebates ?

A. To control it.

Q. Well, where did the car line get benefit from that ?

A. Well, the car line would go to the shipper and make the best deal they could. They would pay him, say, for the routing from California to Chicago, fifteen dollars a car; maybe ten dollars a car; maybe twelve dollars and a half; and east of Chicago more. The further distance away from California, the greater rebate they could pay. The car line got the difference between what they contracted with the shipper for the routing for and what was allowed them by the railroad as excess mileage. That would be their profit on the transaction.

Q. *Then, under that arrangement, the car line did the routing and not the shipper?*

A. *The car line absolutely did the routing.*

Q. *Do you know that?*

A. *Yes, sir.*

Q. Do you know of any shipper who was prevented by any car line from routing his goods, citrus fruits?

A. I know a number of them. But one that I remember in particular with the Arlington Heights Fruit Company at Riverside. Well, Prenda is the load station on the Southern California railway. That station is an exclusive station on the Southern California railway. And this was in 1897 and 1898. The entire business, I found, of the Arlington Heights Fruit Company was going to the Southern Pacific at Colton, thence their line to El Paso and Texas and Pacific beyond there and its connections. I went to the manager at that time of the Arlington Heights Fruit Company, and said to him that it didn't look exactly right to have his business going over the lines of the Southern Pacific when he was located on our lines and expected us to do a good many favors for him in the handling of his various business. He answered me that it

was not his fault; that when he made the arrangement for the routing of his business with the Continental Fruit Express they had told him that they would route his business largely over the Santa Fe, but that he started to route his business over the Santa Fe lines and the manager of the Continental Fruit Express objected and insisted that he route it care of the Southern Pacific at Colton via El Paso. He also stated to me that he preferred the Santa Fe line; that he had always heretofore sent his business that way and was willing then to do anything he could to turn the business to the Santa Fe line. That year I think the Arlington Heights Fruit Company controlled about five hundred carloads of citrus fruit. I then called on the manager of the Continental Fruit Express to find out what the trouble was, and I soon learned. He said to me that if the Santa Fe Railroad would allow the Continental Fruit Express excess mileage amounting to ten dollars per car to Kansas City, and twelve dollars and a half per car to Chicago, that the business of the Arlington Heights Fruit Company would be sent over the Santa Fe lines, otherwise the Continental Fruit Express could not afford to let the business

go over the Santa Fe lines, as they had contracted to pay the Arlington Heights Fruit Company a certain amount per car for the routing. The case of the Arlington Heights Fruit Company is a fair example of all the other business.

Q. To your knowledge? To your knowledge?

A. Yes, sir.

Q. What did you do about this?

A. Well, we were obliged to meet the situation. We had to satisfy the Continental Fruit Express, and we did so and got the business.

Q. Then, when the shippers were receiving rebates, they were not, as you understood it, in control of the routing of their fruits. They surrendered that routing as a price of the rebates?

A. They surrendered the routing to the car lines."

Again at page 894 he testifies:

"Q. *Well, you don't consider that the shippers ever routed the business?*

A. *Not to my knowledge. That is the great bulk of the business.*

Q. *Did you, as a traffic man, when you wanted more business, wanted business that*

you thought should come to the Santa Fe lines, consult with the car line companies to get it?

A. *Always, before that.*

Q. *And did you find that they were the people who handled it and controlled it?*

A. *I did.*

Q. *The car line companies then routed the citrus fruit traffic before 1900?*

A. *Yes, sir.*"

Mr. William Sproule, the Freight Traffic Manager of the Southern Pacific Company, testifies very fully upon this matter, and says at pp. 914, 915, 916 of the record as follows:

"Q. Are you familiar, in a general way, with the conditions prevailing in reference to the transportation of citrus fruit from southern California prior to the first of January, 1900?

A. Yes, sir.

Q. Now, in a general way, what were the conditions prevailing in that behalf with respect to rebates?

A. The conditions for several years had been growing worse in that respect, until in 1898, it became a very serious question, and in 1899 became intolerable, so that some

remedy must be had. Do you want me to explain at length what I mean by that?

Q. I wish you would, yes.

A. Well, the demoralization was one of development. At first certain roads came in that hadn't been sharing in the orange business, and which by reason of their location would not readily obtain any material part of the traffic. They came into southern California and offered shippers a certain number of dollars per car, or on some similar basis, for every car that the shipper would send over their road. The effect of that was to divert the business from the lines that had normally been getting it and which were in the natural direction of the traffic, that it would take at the natural instance of shippers, owing to those being the lines that could render the most direct service—it was being diverted to these other roads that previously had little or no share in the traffic. The result of that was of course to immediately create consternation among the roads that were being deprived of it. It had the further effect of complicating relations with the car lines. Particularly so with respect to cars under refrigeration. The car lines had made their arrangements for refrigeration by the usual routes, the routes

that the oranges normally took, only to discover that they were called on to refrigerate the cars by routes that the fruit had never taken, or had taken in such trifling quantity as not to count in the general result. With respect to returning the refrigerators, the car lines found, and the carriers that had the car lines under contract for car supply found, that the cars could not be got back with expedition. There was trouble about that. The roads having cut the rate in order to get business didn't have the same interest to get the cars back that they had to get the revenue loads. Out of that grew a condition, gradually, quite aggravated, in which the car lines made up their minds that if this thing were to be handled in that way there was no reason why the car lines should not get in and control the movement of these loads instead of having the isolated roads come in and do it for them. The shippers lent themselves readily to that, because instead of doing business with various roads and having to do a lot of reporting and accounting in connection with those deals, they could make their arrangements with one car line, that is, one of the several car lines that were engaged in the business. These car lines were prompted

to enter into the deals, not merely by a desire to control—to have some direction over the routing of their own cars, but also out of a jealous desire to secure for the cars they represented an adequate share of the traffic. Otherwise the competing car line might and would make these deals with shippers and divert the business from them. The C. F. X. and F. G. E. car lines on our lines, for example, were bitter competitors. The Santa Fe Fruit and Refrigerator lines operating on the Santa Fe and the F. G. E. also operating on the Santa Fe were bitter competitors, and each car line competed with the other actively. So that their self interest forced them into this arrangement. The shippers took to it. I use the term " shippers " in a general sense. Whoever was the party that controlled the load in the car, whether it was the actual consignor or the consignee or a fruit exchange representing the grower, or whoever it might be that controlled the load. It had gradually got to a place in which the rebate thus created routed the car.

Q. Now, let me ask you, if you will permit to interrupt you at that point. You say the rebate routed the car. Through what instrumentality or operative agency,

as in the evolution of this practice of rebating, was the rebating principally effected through the roads themselves or ultimately through these car lines?

A. It began with the roads themselves, the minor roads, roads that had not been in the traffic and desired to get into it, but by reason of there not being desirable routes found that it was necessary to pay the shipper a bonus in order to get him to use that road. That was the beginning of it. The evolution of it, as I have said, was through the car line, then, finding that these arrangements interfered with their arrangements, firstly, as to refrigeration; secondly, as to the return of the cars, the car line having an interest in that so as to keep their cars as busily occupied as possible, in order that they might get the mileage out of them that would be necessary to remunerate them for the service of the car in the traffic. In the refrigeration, I should say their interest was that they had contracts with the carriers. Speaking for the Southern Pacific, they had a contract with us, under which they were liable for the refrigeration and for any damages resulting from failure to refrigerate. They were responsible to the growers directly, and to us indirectly, be-

cause we stood back of the shipper if the refrigeration was imperfect. Hence, if these cars were being taken off the routes upon which they made their arrangements for refrigeration, being the routes the shippers had hitherto used, and which were generally recognized, it interfered with their arrangements completely. Having made their arrangements, then, with one set of roads, they had to turn around and make new arrangements with another set of roads, perhaps on a notice entirely inadequate or no notice at all. The shipper would simply tender this car and say he wanted it routed a certain way. That, then, was the motive as to refrigeration. The shipper paid the car line for the refrigeration. That is the only service on the part of the car line in the orange trade for which the shipper has to pay—for the car. If it moved under ventilation there is no charge made to the shipper for the use of the car. But on the other hand, on those cars too, the difficulty was to get them back. Keeping the cars moving in this service is an endless chain. Not only must they be loaded and go out but they have got to be kept moving in both directions. And the interest of the car owner, the car line, in that car, is to keep that movement continu-

ous. And we cultivate that because it helps us to get the cars back. But under those conditions neither we nor the car lines could get the car returned with equal promptness, because the business was done on a basis that caused the roads handling it to feel that they were not warranted in giving the empty cars satisfactory service, such as Mr. Hibbard has just described for the Santa Fe. They said it was too expensive, and so the cars would move along the same as any other empty returning home, which was entirely ineffective for our purposes. The consequence of that, on the other hand, was that under that system there was, every season, a cry, a pronounced cry, of car shortage and car famine. Now, as to the agency through which it was done. The evolution of it was that it was easier for the party owning or controlling the carload of oranges to do his business with a car line than in any other way, and he just followed the line of least resistance and did it that way. Further, he came more into contact with car line men than he did with others, because all the refrigeration was done through him, and it was an easy and natural way of doing it.

Q. Well, then, by a sort of natural selec-

tion the car-line owner became the final actor and agent in the matter of rebating to the shipper?

A. Yes, sir. And the car owner, on the other hand, was forced into it largely by force of circumstances, as I have described.

Q. Exactly.

A. Growing out of that, he got into a place in which he became a competitive solicitor of rebates—or, in order to obtain the money wherewith to pay rebates. And he worked with all connections, on the basis of either so much per car, or an excess of car mileage, or some other device, generally car mileage, that would give the money to pay the shipper. Now that developed until our position became intolerable, as I have already said." * * *

A clear statement of the situation prior to the adoption of the routing rule is found at p. 1051 of the record in the affidavit of Mr. W. A. Bissell where he describes the growth of the rebate system as follows:

"Prior to the enforcement of the routing rule and under a system of through transportation upon a through rate, the integrity and lawful maintainance of such rate has been attacked and vitiated by unlawful com-

petition and struggles for business among the connecting lines of the initial carriers. The distribution of the commodities by shippers among the connecting lines was not determined by lawful competition in the price of transportation, for such price was a fixed, uniform and published price, nor was such distribution determined by competition among connecting carriers in the matter of services and facilities. The course of transportation was fixed by secret cutting of the lawful rate—by the offer and acceptance of illegal rebates which grew to such an extent that scarcely a car of citrus fruit was hauled from southern California upon which an unlawful deduction from the regular tariff was not made. This unlawful competition by way of rebates and violation of the commerce act, while at first operating between connecting lines and shippers, settled down into an arrangement between connecting lines and the private car lines, and such private car lines, operating with the funds illegally paid them as rebates by the connecting lines, purchased from the shipper the routing of the commodity and thereupon routed such commodity in accordance with the rebates. The initial lines, under these conditions, were powerless.

> The connections competed unlawfully for the business. The shipper sold his privilege of distribution among connecting lines and the rebate, as handled by the car lines, routed the commodity. It was to break up this unlawful system and to maintain the rate according to law that the initial carriers insisted upon the routing provision in the joint tariffs. With the control of the routing in their hands, the practice of rebating was extinguished."

The testimony which we have quoted shows beyond any question that prior to January, 1900, the shippers did not exercise the right of routing their oranges beyond the terminals of the initial carriers, but sold that right to the private car lines. These private car lines having purchased such right of routing at the lowest figure possible from the shippers, sold this routing to the highest bidder among the Eastern lines, pocketing the difference between what they succeeded in exacting from the Eastern lines and what they were obliged to give up to the shippers. We have, therefore, prior to January, 1900, the railroads at the mercy of private car lines which claimed to be unhampered by any statutory control. The demoralization attendant upon

the business of the carriers being subservient to a private car line, is obvious, and is certainly made unmistakably clear by the witnesses whose evidence we have referred to. To do away with this extraordinary situation was the purpose of the railroads when they adopted the right of routing.

THE REASON FOR THE EXERCISE BY THE INITIAL CARRIERS OF THE RIGHT TO ROUTE BEYOND THEIR OWN TERMINALS.

It is not apparent what possible advantage or reason there could be for the initial carriers adopting the routing rule outside of the reason given by them. The amount of business which they would carry was entirely unaffected by the question of who routed the oranges beyond their terminals. They were the only lines over which the orange cars could go for distribution at eastern points. Their carriage would be the same, whether the oranges were routed by shippers, carriers, or by private car lines. It is therefore not obvious what basis there is for any suspicion of improper or ulterior motive on the part of the roads which adopted the routing rule. Certainly their testimony was clear upon the point

as to why they did determine to route the orange cars, and is absolutely undisputed.

W. G. Barnwell, Assistant General Freight Agent of the Atchison System, testified at page 440 of the record as follows:

"Q. What was the reason for your reserving the right to route since January, 1900, in cases where you thought you should route?

A. To avoid any possibility of irregularities in line with the tariff governing at that time.

Q. Well, be more specific, if you can.

A. Well—

Q. What irregularities do you refer to?

A. Rebates, for instance.

Q. Were they existing at the time, these irregularities?

A. They were prior to the time that the initial lines took control of the routing.

Q. And have they existed since?

A. Not to my knowledge."

Mr. Edward Chambers, the general freight agent of the Atchison System, testified at page 893 as follow:

"Q. Now, what was your purpose—first, did you have anything to do with Mr. Bissel

in the matter of assuming control of this routing? Did you co-operate with him?

A. Yes, we consulted together.

Q. Well, what was your purpose in assuming control of the routing?

A. It was to prevent the paying of rebates. I recommended it to Mr. Bissel myself.

Q. By the payment of rebates, you mean the—in effect the cutting of the published tariff rates?

A. Yes, sir.

Q. Did you have any other purpose? Was this the sole purpose?

A. That was the sole purpose. My judgment was that that was the only way in which it could be stopped. We had tried various ways before that."

Mr. Paul Morton, in his testimony, speaks as to the change of routing as follows, at page 117:

"Q. Are you familiar with the change as to routing that was made?

A. I am?

Q. When was that? January 1st, 1900?

A. January 1st, 1900.

Q. Did you have anything to do with the change of the practice as to routing?

A. I approved of it?

Q. And for what reason was the change made?

A. Well, the change was made for many reasons. In the first place, the citrus fruit business of California, to a very large degree, was being handled by the fruit companies interested in private car lines, and it was very unsatisfactory both to fruit growers and fruit shippers who did not have cars of their own. We had a great many protests from the citrus fruit men against their fruit being shipped in cars belonging to their competitors in the fruit business, and they besought us at various times to supply other cars for them to ship their fruit in than the cars belonging to Earl and Armour." * * *

(P. 118) Q. Well, you mention that as one of the reasons why the change of routing took place?

A. The routing to a large extent prior to this change, while apparently in the hands of the consignor, was in the hands of the owners of these private car lines. * * *

(P. 119) Q. Well, how could the action you took in January, 1900, the exercise of that power of routing, have anything to do with eliminating the trouble referred to in the letter you read?

A. Mr. Earl on account of the large business that he controlled himself and on account of owning and to a certain degree directing the movement of these cars in which other people's fruit was loaded, sold the business to the highest bidder.—* * * When I say sold the business I mean that the line that would give them the largest rebate—

Q. Railroad Line?

A. The railroad line that would give them the largest rebate secured the business. * * * (P. 121) Now it cost our company the last year, the year preceding 1900, quite a large amount of money to meet this competition, and shippers in Southern California who did not get the full benefit of this reduction and who had to divide it with Mr. Earl and others, naturally were indignant, *and it was in order to prevent that state of affairs solely and for no other reason in the world than to maintain legal rates that we took the routing of this business in our own hands.*"

Mr. William A. Bissel says as to this point p. 876:

"Q. What was the object of the Santa Fe companies in preventing this giving of re-

bates and in putting forth the rule to control the routing?

A. The object was to be relieved of the dangerous practices that were in vogue, to obtain control of their own equipment or the equipment that was assigned to their line over their own road, and to enable them to get fair compensation for the service that they were performing without violating the law either directly or indirectly."

There is nothing in the record to show any ulterior or other reason whatever on the part of the initial carriers for exercising as to the orange traffic the right of routing beyond their own terminals.

We therefore respectfully submit that the routing was done by the initial carriers for the sole purpose of destroying the practice of giving rebates, and that no other motive is suggested by the testimony for the action of the carriers in that regard.

THE REBATE SYSTEM WAS BROKEN UP BY THE ADOPTION OF THE ROUTING RULE.

Shippers as well as carriers agree that since January 1, 1900, neither the car lines nor the

shippers have been able to collect any rebates from the Eastern lines or from any other source.

Mr. Naftzger, the President and Manager of the Southern California Fruit Express, the original complainant before the Commission, testifies as follows at page 806 of the record:

> "MR. HERRIN: You have paid the full tariff since January 1st, have you not, this year, refrigeration tariff?
>
> MR. NAFTZGER: I think so.
>
> MR. HERRIN: Have you got anything back?
>
> MR. NAFTZGER: No, sir.
>
> MR. HERRIN: Isn't that the trouble in this matter?
>
> MR. NAFTZGER: That is one of them."

Samuel H. Westfall, an orange shipper testifies in answer to questions from one of the Commissioners, as follows (p. 832, 833):

> "COMMISSIONER CLEMENTS: Are you receiving rebates now from anybody, any company, any source?
>
> MR. WESTFALL: No, sir.
>
> COMMISSIONER CLEMENTS: No commission or anything, directly or indirectly, under any name, by which you get back any of the money you pay?

MR. WESTFALL: Nothing.

COMMISSIONER CLEMENTS: Nothing for refrigeration or for freight?

MR. WESTFALL: No, nothing."

Mr. Earl, President of the Continental Fruit Express and the Earl Fruit Company, says at page 848, as follows:

"MR. HERRIN: Have you paid any of these rebates or allowances since January 1, 1900, Mr. Earl?

MR. EARL: No, none have been paid or promised.

MR. HERRIN: Has the Continental Fruit Express paid any such rebates or allowances since January 1, 1900?

MR. EARL: No. * * *

COMMISSIONER CLEMENTS: Are you receiving any now from the eastern connections?

MR. EARL: No, sir.

COMMISSIONER CLEMENTS: Or have you any understanding that they are to be paid hereafter?

MR. EARL: I know of none.

COMMISSIONER CLEMENTS: Would you know if there were any to be paid?

MR. EARL: I probably would. The railroads are routing these cars now; they are

going over all kinds of routes. We have no control over the routing. Those eastern roads can't buy the business if they wished to do so. They can't buy it.

COMMISSIONER CLEMENTS: You mean the initial roads control them?

MR. EARL: Yes, sir; the initial lines route the cars. The car lines have nothing to do with it any more.

COMMISSIONER CLEMENTS: Since that condition of things has been brought about you keep all of your mileage and refrigerating charges?

MR. EARL: We hope to, yes, sir.

COMMISSIONER CLEMENTS: Are you doing it?

MR. EARL: Yes, sir.

COMMISSIONER CLEMENTS: These shippers are not getting any of that drawback?

MR. EARL: No, sir; not from the Continental Fruit Express.

MR. HERRIN: Have you any reason to believe that any of these other car lines is now paying any rebates since January 1, 1900?

MR. EARL: No, sir; I don't think so. I have seen no signs of it. If they had been I think we would have known of it.

MR. HERRIN: You would have found some symptoms of disease?

MR. EARL: *I think there is nothing of* that kind now."

Mr. Arthur Gregory, another fruit grower and shipper, was examined before the Commission, and testified as follows (p. 853):

"MR. STUBBS: Have you had offers of any rebates this season, before or since the first of January?

A. No, sir.

MR. STUBBS: Have you had the promise of any rebates before or since the first of January of this season?

A. Yes, sir.

MR. STUBBS: And you have not received any rebates this season, either before or since the first of January?

A. No, sir.

MR. STUBBS: And do not expect to receive any?

A. Don't expect to."

Mr. E. S. Moulton, a shipper and packer of oranges, testifies at page 861, as follows:

"Q. Well, have you any arrangement, or has your company, the Consolidated Forwarding Co. or any firm or person a member thereof, an arrangement, direct, or indi-

rect, whereby they are to get any rebates, say, since the 1st of November, with any connecting carrier in the East, or any railroad company?

A. Yes, sir.

Q. They have an arrangement, have they?

A. Yes, sir.

Q. Are they able to effectuate that arrangement now, since the first of the year?

A. No, sir; you said 1st of November.

Q. I said the first of November, and I ask you, if they are able now to effectuate that arrangement, since the 1st of January? Are they able to carry out and enjoy the results of that arrangement?

A. No, not since the 1st of January.

Q. That arises from the railroads exercising the routing of the cars?

A. I don't know. I presume that that is it.

Q. You do know that the routing must be in your hands in order to realize on that rebate arrangement, don't you?

A. Yes."

The testimony of the appellants is to the same effect that since the first of January, 1900, no rebates whatever have been paid. Mr. Morton upon this point says at page 127 of the record:

" Q. Now, you have stated the purpose of taking into your hand the routing of this citrus business, namely the stopping of rebates and this secret cutting of the published tariff rates. Was this stopped?

A. It was.

Q. Definitely and fully?

A. Absolutely.

Q. And in the opinion of the Interstate Commerce Commission the statement is made that it is not clear how that would stop it. Could you illustrate or explain how?

A. Well, every connection was given to understand that in case they were found offering concessions for this citrus fruit business after the first day of January, 1900, that we would see to it that the business was diverted from their lines; and I remember going so far as to say that if I found anybody cutting our through rates secretly after the first of January, 1900, that we would not only divert the citrus fruit business from them, but we would take away other business; that it was our intention that the published tariff rates should be absolutely maintained. And that was done in the interest of the small shipper and in the interest of not having any discrimination in that business."

Mr. Edward Chambers, whose testimony is very clear and convincing, says at page 202, in answer to questions by the counsel for the Government, as follows:

"Q. Do you know of any rebates that have been paid by the Santa Fe or the connecting lines of the Santa Fe in the East made to orange shippers or growers or packers during the present year?

A. I do not.

Q. Do you know of any such rebates during the past year?

A. No. sir.

Q. How long since you have known of any rebates having been paid?

A. About three or four years.

Q. You have known of no rebates having been paid in three years by either the Santa Fe or by any other road arising out of the citrus fruit business? Is that so?

A. No. sir. I believe in the past three years the rates have been absolutely maintained.

Q. What date? Can't you fix any dates?

A. Since the railroads took the routing of the citrus fruit into their own hands. I think it was January 1, 1900."

Mr. Sproule, the General Freight Agent of the Southern Pacific Company, says at page 290, as follows:

"Q. To the best of your knowledge and information, has there been any payment of any rebates or drawbacks, or any other bonus given by any railroad company for the transportation of fruit to any shippers within the last three years?

A. Since the first of January, 1900, no, there has not been any to my knowledge.

Q. Have any such rates been paid indirectly?

A. Not to my knowledge.

Q. I would say have any such rebates been paid indirectly.

A. I don't believe there have."

Mr. Bissel, the Assistant Traffic Manager of the Atchison System, says at page 876, as follows:

"Q. Did the enforcement of this rule stop the giving of rebates?

A. Absolutely. * * *

Q. You know that?

A. Yes, sir; I know that to be a fact. It absolutely prevented the necessity of paying rebates."

Mr. Sproule, at pages 920, 921, of the record, says:

"Q. So far as you know—

A. So far as we have any knowledge.

Q. —have any rebates been paid in the citrus fruit business since the tariff—with this condition, that the right of routing should be reserved to carrier?

A. I have every reason to believe that from January 1st, 1900, until this date, there has not been a nickel paid on citrus fruits.

Q. Nothing of that kind has been brought to your notice?

A. It has completely stamped it out.

Q. Is it a fact, so far as your observation goes—I think there is some testimony to that effect here—that prior to the enforcement of this routing rule, generally speaking, every carload of citrus fruit paid more or less in rebates?

A. In 1899, I doubt whether there was any carload of citrus fruit that moved out of southern California without somebody getting a rakeoff on it, although the shipper himself might not get it at all."

It would seem that but one conclusion can be drawn from this evidence, and we, therefore, feel safe in our assertion that it must be conceded

that (1) rebates were paid prior to January, 1900, (2) that the routing rule was adopted to break up rebates and (3) that the rebate system was broken up, and no rebates have been paid since January, 1900.

The routing rule having admittedly accomplished a great good, it now becomes important to see if it resulted in any evil. Were the orange shippers really and substantially affected by it in any way at all? Did it change their relation to the cars shipped by them? Did they really have any less or different control over the shipments made by them than they did before?

INTERESTS OF SHIPPERS UNCHANGED BY ROUTING RULE.

It is significant that no growers of oranges have made any complaint before the Interstate Commerce Commission, and the testimony of the few who have been examined has in no way shown that their business has been affected one way or the other by the adoption of the routing rule, excepting that they have not received the rebates which they formerly did.

It is somewhat difficult to understand just what

this proceeding is all about, unless we recall the the testimony of Mr. Naftzger, the President and Manager of one of the complainants which had received about $175,000 of rebates in four years, who says at page 807, that one of the troubles in this matter is that his Company, the petitioner in this proceeding, was not getting rebates.

Certainly there is no practical change in the situation since January, 1900, so far as the routing of the oranges is concerned. Before that time the shippers surrendered such right to the private car lines in return for what they might or might not get from the car lines in return therefor. Even if, however, they had themselves exercised the right of routing prior to January 1, 1900, and had not sold it to the car lines, we do not see how by the adoption of the routing rule they have lost any advantage which they had before. The important points to the shippers in routing are to have (1) the right of diversion; (2) the right of naming the towns and cities through which the car should go on its way to final destination; and (3) the right to select the delivery line at the point of destination.

It is not clear what else there is which is of any importance to the shipper, except the points above indicated. As to the selection of the delivery line, Mr. D. W. McLeod, a witness in behalf of the Interstate Commerce Commission, testifies at page 252, as follows:

"Q. Now, at the present time what delivery do you get on shipments to New York?

A. We get Erie.

Q. The same thing?

A. Yes, sir.

Q. What one do you get on shipments to Detroit?

A. Well, I don't know that there is a material difference about that. I have not particularly noticed that.

Q. What one do you get on the shipments to Buffalo?

A. We get the Lake Shore, I suppose, as usual.

Q. The same as heretofore?

A. Yes, sir.

Q. And shipments to St. Louis?

A. Get the Missouri Pacific.

Q. The same as you had before. And shipments to Boston?

A. We get Fitchburg delivery.

Q. The same as heretofore. And on shipments to Cleveland?

A. We get Nickel Plate.

Q. The same as you had before?

A. Yes, sir.

Q. Then the reservation of the right to ship has not changed the condition that you consider desirable?

A. It makes a big difference in the time it gets there, though.

Q. Yes, but as to the delivery, you have the same delivery as you had before?

A. Yes, sir; on request."

Upon this point, Mr. Fay says at page 837 as follows:

"MR. STEVENS: In other words, you have enjoyed practically the same route since the first of January that you did before, notwithstanding the fact that the railroad company itself has chosen the routes? Is not that true?

MR. FAY: Yes, that is true."

There seems to be no dispute but that the right to divert is permitted as fully as it was prior to January 1, 1900. The witnesses for the complainant agree with the witnesses for the railroads upon this point.

Mr. McLeod, an orange grower and shipper, says at the bottom of page 246:

> "Q. * * * I want to know, generally speaking, since the initial carrier has directed the routing, haven't the requests of the shipper for diversion been acceded to as a general rule?
>
> A. As a general rule, I think they have, yes, sir."

Mr. C. B. Strome, agent and superintendent at Chicago of the terminals of the Atchison System, gives a number of diversions for the years beginning in 1899 at Chicago, from which it appears that almost half of the cars received during the three months of the heaviest shipments were diverted at Chicago for eastern points. He says at page 139:

> "Q. That makes a total of how many received all together in those three months?
>
> A. During the three months for those five years 3,971 cars were received, of which 2,004 were unloaded on our tracks and 1,967 diverted east.
>
> Q. During what months of the year are the heaviest receipts of citrus fruits?
>
> A. During the above months, March, April and May.

Q. In making your figures you took those as the months best representative of the business done?

A. Yes."

A. G. Stearns also examined on behalf of the complainant, who was an orange and fruit shipper, says at page 257:

"Q. The practice to allow diversions is universal, I believe?

A. Yes, sir."

Mr. James A. Everest testifies to the same effect. He was also examined on behalf of the complainant and is a grower of oranges. He says at page 276:

"Q. Yes, and the company so far as that routing was concerned, allowed you freely to divert, did it not, as a general rule?

A. I have had very little trouble so far as diversions is concerned."

Mr. Naftzger, the President and Manager of one of the complainants, says at pages 810, 811 of the record:

"MR. HERRIN: You can divert your cars all right now, can't you?

MR. NAFTZGER: At present in pretty good shape, yes, sir.

MR. HERRIN: Don't you in some cases give the destination of your car, at say Omaha, and then before you get to Omaha, tell them to divert to Chicago?

MR. NAFTZGER: Frequently; yes, sir.

MR. HERRIN: And then when you get to Chicago, tell them to divert to some point farther east? You do that three or four times, don't you?

MR. NAFTZGER: Yes, sir; we seldom do it more than once.

MR. HERRIN: That is a very great advantage to you, that diverting?

MR. NAFTZGER: It is absolutely necessary in the marketing of the crop, in my opinion."

E. S. Moulton, a packer and shipper speaks of this right of diversion and explains how it is done at the expense of the railroads, at page 860, as follows:

"Q. When you receive an offer from one of your brokers, to several of whom you have sent manifests of that particular car, you then divert the car from the original destination to the destination at which the broker who gives you the order resides, or orders the car to be sent to?

A. Yes, sir.

Q. *The railroad companies do that diversion at their own expense, do they not?*

A. *Yes, sir.*"

Aside from the provisions of the citrus fruit tariff permitting diversions, and the testimony of the railroads to the effect that these diversions are always granted, it appears that by reason of the present organization of the system of granting diversions, the privilege is better exercised now than it was prior to January, 1900, and that the cost of it, which is very heavy, is entirely borne by the railroad companies. Upon this there seems to be no dispute.

Mr. Edward Chambers, examined in behalf of the Atchison System, says at page 911:

"Q. Mr. Chambers, it is in evidence here from a number of witnesses that after the routing was taken in charge by you that it was impossible to have fruit diverted as well as it had been diverted when they were controlling the routing as they claimed they were. I will ask you to state what the facts were as to that?

A. The rule was continued just the same as it had been previously. I think if anything the service is improved.

Q. You think that diversions are still

being made as promptly as they were made before?

A. I think they are made to-day more promptly than ever before, on account of the increased wires, telegraph wires, and the general organization of the service.

Q. Who makes the diversions now for shipment?

A. Do you mean who—

Q. What company?

A. With whom the diversions are filed?

Q. Yes.

A. For the Santa Fe Company they are filed with any of our agents in California.

Q. Well, then, does your company make the diversion no matter where the car may be?

A. Yes sir. Always has.

Q. And does now?

A. Always had—the connecting carrier has always had to have the consent of the Sante Fe road before they could change a destination; * * *

(Record, p. 913.) Q. Then so far as the diversions are concerned, they are handled now by your company just as they were before 1900, before you routed?

A. Yes sir.

Q. But you think that on account of

better telegraphic facilities they are handled more expeditiously?

A. And better organization of the system."

The evidence of Mr. Sproule, General Freight Agent of the Southern Pacific Company, upon this point is very clear. At page 924 he says:

"Q. Now, with respect to the right of diversion, that right was very freely exercised by the shipper prior to January, 1900, was it not?

A. Yes, sir; and that has continued to be very freely exercised ever since and is to-day.

Q. Was it not the freedom and facility with which the right of diversion was exercised by the shipper that gave rise to the epithet 'tramp car' as applied to cars of oranges that went out from southern California?

A. Yes, sir. The exchanges for a long time, and subsequently other shippers, to protect themselves, habitually forwarded their cars to a false destination.

Q. A hypothetical point?

A. A hypothetical point.

Q. And between the hypothetical point and the point of origin the car was diverted

freely at the instance of the shipper in search of a possible market; is that correct?

A. Yes, sir; diverted many times, half a dozen times, in transit.

Q. And it was the movements of that car in that way that gave rise to the epithet 'tramp' was it not?

A. Yes, sir.

Q. Has the same freedom of diversion been permitted the shipper since the tariff of January, 1900?

A. Precisely."

Mr. O. L. Rule, the diversion clerk of the Santa Fe System, tells about the situation prior to January 1. 1900, and since that time. He says, at pages 972, 973 of the record:

"Q. Well, it is in testimony here that since January 1, 1900, when the railroad companies have been routing the citrus fruit themselves, diversions have not been so prompt and satisfactory as they were before 1900. I will ask whether you know how they were handled before and after, with respect to promptness?

A. Based on my own experience in the work, I should say most certainly we haven't had anything like the trouble—

Q. Since 1900?

A. Within the last three or four years it has been going more smoothly than it did prior to that time. That I know.

Q. Can you tell whether the relative number of diversions has been increasing from year to year?

A. Why the work is getting heavier every year, but I can't say what it is due to, whether it is due to increase of crop or anything of that kind. We are getting more work each year. I know that.

Q. You mean that the number of diversions is larger each succeeding year than it was the year before.

A. Take the season that closed with last November, we had a great many more than we did the previous year. This year I cannot speak for, because it is too early to tell much about it.

Q. Well, but has there been an increase or not, in the number of diversions from one year to another? Has it been constantly increasing, or otherwise?

A. I think there has been a very steady increase each year."

Again at page 974, he says:

"Q. Well, now, of the cars that are actually diverted, can you state what is the average number of diversions that have been

made on all the cars that have gone over your lines that have actually been diverted?

A. During any one season.

Q. During any one season?

A. Well, take the season that closed the first of last November, I should say we had about 12,000.

Q. 12,000 what?

A. Diversions."

The amount of the diversions of the orange shippers and their burdensome character is well brought out by Mr. Sproule, at pages 945, 946 of the record, where he says:

" * * * So far this season out of four thousand and odd cars which have been moved, out of 4685 cars which have been shipped there have been 4344 diversions, which is almost a diversion for every car. Now, to make those 4344 diversions, there were approximately—there was a minimum of twelve thousand messages sent over the wires. Those messages we have to use the Western Union wires for?

Q. And pay for them?

A. Pay for them. That is, if we don't pay in coin, we pay in kind.

Q. You have a contract about that, haven't you?

A. Yes, we have a contract up to a certain amount for which we return service and give them transportation. In other words, they take it out in trade. Beyond that we have to pay coin."

There is no question as to the shipper being accorded the privilege of selecting the towns through which his cars are to pass. That is allowed by an express circular to the agents of the companies, which reads as follows (p. 801):

"SOUTHERN PACIFIC COMPANY.
PACIFIC SYSTEM.

LOS ANGELES, CAL.,
Feb'y 27, 1900.

To all agents in California south of Mojave and Elwood.

Gentlemen:

It has been decided to allow shippers the privilege of placing on shipping orders or other documents covering shipments of citrus fruit, their preference of certain cities or markets through which they desire cars to pass, providing there [are] two or more lines of railway competing for traffic between each of the various points specified.

You may, therefore, accept on shipping

orders, in accordance with the above, the following notation: 'Would prefer this car pass through ,' naming points.

Should any point be indicated, not served by competing lines, you will please request shippers to omit same.

Yours truly,

G. W. LUCE,

A. G. F. & P. A. So. Pac. Co."

We find, therefore, that the shippers have since January, 1900, had the same rights (1) as to terminal deliveries; (2) as to the right of diversion, and (3) as to the right to select the towns and cities through which their oranges should go on the way east, which they had previous to the adoption of the routing rule by the initial carriers. In other words, the shippers' right to control the routing in the points which affect their interests as shippers is the same as it was before. Further than that, it seems that substantially the same routes are used by the initial carriers beyond their own terminals as were used before, except that when possible more direct routes have been selected.

As to this, Mr. Bissel says at pages 878, 879 of the record, as follows:

"A. As a matter of fact, the majority, or a great share, of the citrus business that is moved since this routing was taken in hand by the initial lines has moved over the same roads that it moved over before. The only roads that have been eliminated from the routing by the present practice are the roundabout roads and roads which possibly might come under the definition of the commissioners there, although I didn't know that there were any insolvent—or roads of doubtful solvency, in the United States at the present time. But the roads that the business is being routed over to-day are the best roads in the country."

It is a little difficult to see what possible complaint there can be from the shippers since the practice of routing the freight was taken up by the initial carriers. The routes are certainly more direct than they were before. Before this Mr. Chambers says at page 895 of the record:

"Q. But in the routing that you gave them, did you give them the most direct routing?

A. Always; yes, sir. That is one of the factors that goes to make up the circular of instructions to agents. Not only the most direct route, but the routes that the ship-

ments can be diverted from the destination —from one destination to another. For example, into Buffalo. We could not send a shipment of citrus fruit into Buffalo over a line that it could not be diverted out from Buffalo to New York, because the market is likely to be off at Buffalo, or overcrowded, and the shipper will want to divert to another market. So, that would be a very serious objection to sending it over a line that could not divert it out of Buffalo, and we would not send over any line leading to Buffalo that could not divert beyond and protect the through rate just the same as if the shipment had started from California and gone through to final destination without any diversion.

Q. Do you know whether, as a matter of practice, the routes that citrus fruit has traveled since 1900 have been more direct or less direct than the routes it travelled before.

A. They are more direct. No doubt about it.

Q. Did the car lines send shipments by roundabout ways, to your knowledge?

A. Well, the car lines would send the shipments over the lines where there was the most profit in it for them.

Q. What controlled their routing, the routes they took, if you know?

A. Their mileage arrangements, largely.

Q. That is to say, the money there was in it as rebates?

A. The money they got from it, the mileage.

Q. What controls the route the fruit takes now?

A. The general service, the time and the ability to divert beyond, and the prompt return of the cars."

There is some testimony given by the shippers to show that the time of transit to eastern points is not so good as it was prior to January, 1900, and there is obviously on the part of the witnesses a desire to in some way connect this delay with the exercise by the initial carriers of the right of routing. Just how the two can have any relation to each other is not made apparent.

The table furnished by Mr. Naftzger on page 982 of the record giving a comparison between the time of transit at a selected period prior to January, 1900, and a period subsequent thereto, is hardly a fair one. The time taken prior to January, 1900, is as long ago as 1895 when the business of the railroads was at its lowest ebb and

there was no congestion of traffic on any road in the United States. The time selected since January, 1900, was when the prosperous period of the railroads was gaining its first impetus and the business of all roads was so hampered by the natural congestion, resulting therefrom and the inability to obtain equipment to move the freight offered, that the usual time of transportation over such great distances as from one side of the continent to the other was entirely out of the question. Of course, Mr. Naftzger pretends in his evidence that the times selected by him were especially taken by him in order to be as fair as possible to the railroads, but it is somewhat odd that in his consideration for the interests of the appellants he did not remember the two great facts pointed out by us, which render the statement of no value.

This table or statement is also of no significance as to the Southern Pacific, as the time of transit via Southern Pacific prior to 1900 is not given. It is true that counsel for the Government try to make the witness say that prior to 1900 the time of transit over the Southern Pacific was about the same as that over the Atchison, but his efforts did not meet with any great suc-

cess, and the witness substantially says that he did not make the comparison, for the reason that he had no records from which to do it (Record, p. 984).

That it now takes longer to transport oranges from California to eastern points than it did prior to the routing rule, is not connected with or the result of the exercise of the routing by the appellants. The orange traffic is given the preference over everything on the road except the passenger service (Record, p. 925). Every effort is made to get it forward, and it now goes forward just as quickly (if not more quickly) in proportion to other traffic, as it did before January, 1900. The delay, such as it is, is due to the general congestion of all traffic, and the inability of the railroads to handle their business any more expeditiously. The general traffic conditions on the railroads are shown by the witnesses for appellants to be alone responsible for the one or two days' delay in reaching the east, and it is a delay which has not been connected, and it is difficult to see how in any way it could be connected, with the routing by the initial carriers beyond their own terminals.

As to the delay in transit, Mr. Morton says

that it was due to congestion of business, and testifies at page 131 of the Record:

> "* * * For the last five years you know the railroads of the United States for the first time in their history have been behind the wants of the country, and they have all had trouble.
>
> Q. It has been growing steadily, has it not?
>
> A. The worst trouble in the United States has been on the very best railroad in the world; that is, the Pennsylvania railroad. They could not build—the shops of the country have not been able to build railroad equipment and power fast enough to take care of the business of the country. * * * Well, all I can say is that there has been a very large increase in our business steadily ever since 1896. I believe that our business in 1903 showed an increase over 1896 and 1897 of about 200 per cent."

Notwithstanding this delay from congestion, which was unavoidable and in no way connected with the routing of the freight by the carrier, Mr. Morton points out that the citrus fruit traffic had been handled with more expedition than any

other business and at greater cost. He says at page 133:

> "Q. Relatively, then, you mean to say that the citrus fruit business has been handled with more expedition than any other business you have?
>
> A. It has been handled with more expedition and at greater cost than any other business we have. * * *"

Again, at page 136, he says:

> "Q. How does the schedule time east of Chicago compare during the last two years with the time prior to 1900?
>
> A. I could not tell you except in a general way. I know the time east of Chicago has been anything but schedule in the last two years because there has been such a congestion of business that it has been almost impossible for the railroads to make time."

That the time of transit is not so important as it seems upon first consideration of the subject is evident from the fact that the shippers themselves were the cause of great delay in the unloading of their cars. The average of such delay, which is due entirely to the shippers and not in

any way to be laid to the railroads, amounts to over six days on every car unloaded at Chicago in the five years ending with 1903. As to this Mr. C. B. Strome, testifies at pages 139 and 140 of the record as follows:

"Q. In the three months mentioned in 1899 what showing have you?

A. In 305 cars unloaded on track there were—

Q. 305 were unloaded you mean?

A. Yes.

Q. And how long were the 305 cars delayed on an average if you can tell, before unloading?

A. They were delayed on an average 7½ days. That is not counting the day of arrival.

Q. In 1900, in the months mentioned how many cars were unloaded on your track?

A. 412 cars and they were delayed on an average 6.49 days.

Q. In 1901, how many cars were unloaded on your tracks?

A. 465.

Q. And what was the average delay in unloading?

A. They were delayed on an average 5 days.

Q. In 1902?

A. 317 cars, delayed on an average 5.81 days.

Q. In 1903?

A. 505 cars, delayed on an average 6.28 days.

Q. In the five years mentioned how many cars have you unloaded altogether?

A. 2,004 cars, delayed on an average 6.14 days. * * *

Q. Can you state how long the cars that were received here and not unloaded on your tracks but diverted were delayed before being diverted?

A. They were held on an average about the same length of time.

Q. And how long, if you can tell, have cars been held here before being unloaded or before being diverted?

A. In making up these figures I have found cars delayed as long as thirty-eight days.

Q. These delays that you have spoken of, both as to cars unloaded here and as to cars diverted, were occasioned by handling by the consignor or consignee, or by you?

A. They were delayed waiting for orders from the consignee as to what to do with the freight.

Q. What I want to put directly is whether these delays were caused by you in any way?

A. No, sir."

It is pertinent here to notice that the cars while delayed by the shippers required constant attention from the railroads. As to this Mr. Strome says at page 141 of the record:

"Q. Now what attention do you have to give to those cars that are held up on your tracks here, if any?

A. Well, it depends a good deal on the weather. In the winter time we have to see that they are kept from freezing, as far as possible protected from the cold weather.

Q. How do you protect them from the cold in the winter?

A. We have car heaters; Economy car heaters.

Q. What are they—oil stoves?

A. They are a sort of salamander or oil stove, and we put them in the ice tanks of the cars.

Q. In the severe weather?

A. In the severe weather. * * *

Q. What examinations do you make of the cars, and how frequent?

A. Every day we have to open them and

take the temperature, and examine them and see that they are kept in good shape.

Q. Is any charge made by you for this daily examination, and for this heating and care through the cold weather?

A. No, sir.

Q. That is all gratuitous?

A. Yes. * * * When it is received under ventilation we have to look after them just the same, and examine them daily and open and close the ventilators according to the temperature, and open the side doors in order to cool them off when the weather is hot.

Q. So that in both cold and warm weather they require the special attention?

A. Yes, sir."

At page 205 of the Record, Mr. Chambers says:

"Q. In a general way what has caused the slow time you are making the present season on this citrus fruit business?

A. The heavy traffic of all kinds on the system, both local and through. * * *

Q. Were you limited by the lack of motive power to move the traffic offered?

A. Yes, generally.

Q. Was that true of all sorts of freight?

A. Yes sir. I will say we gave preference to the citrus fruit traffic over all kinds of traffic. The other traffic was very much more delayed than the citrus fruit traffic.

Q. You gave a special rapid service for the citrus fruit, being perishable fruit?

A. Yes, sir.

Q. Well, is there anything permanent to these conditions?

A. No, sir; it is getting better with us right along.

Q. Do you expect next season to resume your normal time?

A. Yes, sir; we expect during this season to do so."

Mr. Chambers also points out that the delay in transit caused by the congestion of the railroads is of little consequence in comparison with the delay due to shippers. At page 210, he says:

"A. Of course there are other conditions that delay the cars. The markets get glutted, and I have known where the freight remained in the car as long as twenty days at a destination in New York. This year we had 200 cars at one time standing on our tracks at Chicago that had been there all the way from five to fifteen days.

Q. Whose fault was that?

A. The shipper, the consignee; probably awaiting better market conditions. The weather had something to do with it.

Q. It was no fault of yours?

A. No, sir. We had carried it to the destination.

Q. But the shipper for some reason does not give the orders to unload, awaiting for market conditions to improve and for other reasons and a good deal of the time is occnpied in that way?

A. Yes, sir. I think yesterday I got advice that we had 40 cars on our tracks at Chicago that had been standing there since March 15th some of them.

Q. A great deal of this rotted fruit results from that, doesn't it?

A. Yes, sir.

Q. It does not result from the delay in transit, but from lying upon your tracks at the eastern destination. Isn't that so?

A. *Yes, sir; my experience is the delay of unloading at destination is greater than the delay in transit over our lines to Chicago.*"

Mr. Sproule says at page 291:

"Q. The testimony has shown that the time of fruit cars in transit between Cali-

fornia and eastern points has been longer during the past year than in former years. How do you account for that, or isn't that true?

A. On some shipments that is true. The time last year was not up to standard. While a great many cars did get through on time, a great many others did not. That was because of congested conditions in the traffic of the country generally. The congestion occurred chiefly east of our rails, and although the time made was not the time that we would wish that fruit had been given, and that we aimed to give, it was the best that could be obtained under the traffic conditions that prevailed in the country at the time of movement, and was better than the time made on any other class of freight. In other words, the oranges during their movement last season, even under those conditions, received preferred attention."

At page 911 of the Record, Mr. Chambers says:

"Q. Mr. Chambers, I want to ask you one more question: The testimony of a good many witnesses is to the effect that upon the going into use of this routing practice, there was immediately a decline in the efficiency

of the service. There were delays of citrus fruit shipments. What do you know about that? Most of the witnesses putting the cause of the delay at this routing practice of yours?

A. I could not say as to the service right after the routing went into effect, whether it was any different from that previous. But the routing I know didn't have any effect on our service in any way at all.

Q. If there was any delay after 1900—

A. It was from other causes.

Q. What would they be—what conditions existed which would serve as causes?

A. Well, the large volume of business. I think the year that the initial carriers took the routing was the largest shipment that up to that time had been made of citrus shipments eastbound.

Q. Yes. And was it still larger than the following year?

A. I think it was. I dont remember."

The slight delay of a day or two in transit loses some of its importance when it is remembered that oranges keep from three to five weeks after they are received at destination (Record, p. 858).

The orange growers and shippers themselves

admit that there has been great congestion of the railroads since 1900.

Mr. James Mills, an orange grower, says at page 226:

> " * * * I realize too that the immense volume of business that has been done has congested to a large extent the railroad lines. It is only a question whether the railroads will equip themselves for what they can see will be necessary to bring our fruit to the market."

It would seem therefore that the delay of a day or two in the delivery of oranges at Eastern points is in no way related to the adoption by the carrier of the routing rule, but is caused by the congestion over all railroads in the country resulting from the great volume of business which is now carried. The unimportance of such delay in transit is certainly emphasized by the fact that three times as much delay per car results from the shippers failing to give orders as to diversions and unloading. The delay resulting from congestion of traffic amounts to about two days, the delay from causes controlled entirely by shippers is over six days per car. It therefore appears that the delay in transit not only is in no way

connected with the routing rule, but even if it was, would be a matter of no real importance to the shipper.

There seems to be absolutely nothing in the suggestion that the shipper is compelled to send his oranges over insolvent lines. In the first place, there have been no insolvent lines in the United States since the routing order went into effect, and if by any chance there are any, they are not used in routing the oranges. As to this, Mr. Chambers says at page 896:

> "Q. It has been suggested in the report of the commission that under the present order the shipper is compelled to send over insolvent lines, and that he does not have good settlements made for delays and losses. What do you know about that?
>
> A. I don't know of any insolvent lines that we send business over.
>
> Q. Do you use your power in routing to compel the companies to settle just claims?
>
> A. We do. I can say that we don't have much trouble in getting a connection to settle a claim that has merit, any claim that we would pay ourselves. I have never found any trouble in getting our connections to take the same view of it we do."

Mr. Sproule, at page 923 of the Record, says:

"Q. Some question has been suggested here as to the matter of good faith. Was there any time, since the first of January, 1900, when as a part of its system of routing the Southern Pacific Company sent any citrus fruit cars over impracticable or insolvent routes?

A. Well, I don't know of any insolvent routes, and we would not intentionally send any fruit over impracticable routes. Our own interest in the traffic would suffice to prevent that, and our own liability in the second place. * * *

(Record, p. 924) Q. What I have more particularly in mind is this: Have you selected, in routing this citrus fruit, roundabout routes as against one shipper, and more serviceable routes and more expeditious routes in favor of another shipper, operating a discrimination and prejudice?

A. No, sir.

Q. Has that sort of thing occurred?

A. No, sir. And if it appeared that such a thing were done it would go hard with the officer that undertook it. To begin with, it would be a very unwise thing. In the next place, I don't know what would be the incentive for it. And in the third

> place, it is not a thing that could be done without the immediate knowledge of the public and of the people affected; and it is a thing that is easily demonstrable. But there is no discrimination whatever as between individuals or shipping companies or destinations."

There is no delay on the part of the initial carriers in informing shippers as to the route over which their oranges have gone forward, and they are always advised on this point on the day of shipment, or on the following day.

L. G. C. Spruance, examined on behalf of the complainant, says at page 170:

> "Q. Do you know then of your own knowledge, over what lines your cars go when they leave here for eastern points?
>
> A. The railroads, I believe, will furnish us with the routing after the cars have left."

Mr. McLeod says at page 172:

> "Q. Do you know what lines of road your shipments go over?
>
> A. We usually know; that is, we found out the second day. We don't know the date it goes out, only we know this: If it is a Southern Pacific car the agent notifies us

that it is a Southern Pacific car and it must go Southern Pacific."

Mr. A. G. Stearns, a witness in behalf of the complainant, says at page 256 that

"* * * the Santa Fe nearly always put their routing on the bill of lading and issued us the bill of lading the same day that the cars were shipped or the next morning."

Mr. James A. Everest testifies at page 275:

"Q. Now then, after the railroad companies had assumed control of the routing, the initial companies, as a general proposition you would know in a day or two the route that your car was taking, would you not?

A. Why, when I put in my bill of lading, when I obtained my bill of lading, as a general rule the routing was in the bill of lading."

At page 840 of the record Mr. Fay testifies as follows:

"MR. STEVENS: You knew the routing that the shipment would take just as if you routed it yourself?

MR. FAY: Not at all, the car had gone out.

MR. STEVENS: I mean as soon as the car had gone out—how soon was it afterwards?

MR. FAY. As soon as we asked for it.

MR. STEVENS: Whenever that information was asked it was cheerfully given you, was it not?

MR. FAY: So far as the Santa Fe was concerned.

MR. STEVENS: That has always been true, has it not?

MR. FAY: Yes, sir."

The routing by the initial carriers since January 1, 1900, has not affected in any way the interests of the shippers. They have every privilege granted to them that they had before, and as we have said before in this brief, it is not conceivable how a shipper can have any further interest in the routing, than to determine himself what cities his car of oranges shall go through, what line shall make the terminal delivery, and where and when the car shall be diverted from its original destination to some point where the shipper thinks he can get a better market.

The testimony, however, shows that not only has the shipper the same privileges while the

carrier exercises the right of routing as he had before, but that the request by the shipper to have his oranges routed by any particular line has invariably been acceded to.

On pages 410 to pages 436 of the record, there are at least a dozen or more specific instances given of requests made by shippers to have their business go over a particular route, and in every case, the routing was granted.

The shippers themselves also agree that requests for routing were almost always granted by the railroads. Upon this point, Mr. McLeod says at page 250, as follows:

> "They have permitted us to request such routes. They did that ever since the first—after the first month I think, when the routings were changed. After that they have said, 'If you will send in a separate slip and say you request such and such routings', generally they would give it to us. Sometimes they wouldn't."

Mr. Fay, a witness for the complainant, says at page 840:

> "MR. HUNSAKER: Have you insisted on giving the railroad the routing which you requested beyond the line of the initial carrier?

MR. FAY: In most cases we have made a request for routing; yes, sir.

MR. HUNSAKER: Has that been regarded or not?

MR. FAY: In many cases, yes.

MR. HUNSAKER: In others it has not?

MR. FAY: In other instances they have not respected our request.

MR. STEVENS: Is it not true that so far as the Santa Fe is concerned, that your suggestions in regard to routing have been followed, without conceding your right to make them?

Mr. FAY: Not in every instance.

MR. STEVENS: Has not that generally been true?

MR. FAY: Generally; yes, sir."

Mr. E. S. Moulton, a packer and shipper of oranges, says at page 859 of the record as follows:

"Q. *Referring to the Santa Fe road particularly, how many times have you asked a route that you have not gotten it?*

A. *I don't recall at present a single time that we have asked for a routing and did not get it.* * * *

Q. *Now, I wish you would please tell me what particular routing you asked that was not accorded to you?*

A. I don't recall any.

MR. HERRIN: *Did you always get the routing that you asked for?*

A. *Yes, sir.*"

It therefore appears that there was no advantage whatever to the shipper in having the routing, except in the rebates which they obtained by selling such right prior to January, 1900. This is substantially admitted by the president of one of the complainants, Mr. Naftzger, who testifies at pages 813, 814, of the Record, as follows:

> "COMMISSIONER CLEMENTS: What advantage was there in routing then, in having any option about the routing then, if you did not get any advantage in rate or rebate?
>
> MR. NAFTZGER: Except as I have already said; it was an advantage to have shipments go over lines that would pay a cent a mile each way, instead of over roads that would pay three-fourths of a cent a mile each way.
>
> COMMISSIONER CLEMENTS: That was the same thing as rebates or commissions?"

It is therefore difficult to see in what way the

shipper has been harmed by the adoption of the routing rule by the appellants. He has everything now that he had before January 1, 1900, and he also has the privilege of routing if he chooses to ask it, as it is invariably given on request by the railroad company, with the reservation that it is given not as a right but as a privilege. It is therefore apparent that if this exercise of the right of routing is not a violation of the Act for the reason given by the Commission, or for the reason given by the court below, there can be no other ground suggested for so holding. We therefore come back to the proposition with which we started, viz., that the initial carrier has the right at common law to select the route over which it shall carry freight beyond its own terminal and that such right is not taken from it by any provision of the Interstate Commerce Act, and that it is impossible to claim that the offer by appellants to carry freight beyond their own terminals, if they may have the routing of it, is a pooling combination between the eastern lines or between the appellants and the eastern lines or results in any prejudice or disadvantage to the orange shipper.

We state again the position of the appellants as follows:

FIRST. A joint tariff is a matter solely of private arrangement between the railroads entering into it and its terms and conditions are for them alone to determine.

SECOND. The making of a joint tariff by connecting roads cannot be compelled and no control of any joint tariff is placed in the Commission by the Interstate Commerce Act beyond the power given it by the 6th Section to compel the filing thereof, when made, and requiring that it shall not be changed except upon notice.

THIRD. The condition of the joint tariff in the case at bar agreed upon between the parties thereto was that the initial carriers should have the right of routing.

FOURTH. One of the important considerations of the contract of transportation between appellants and shipper was that the former should have the right of routing the oranges beyond their own terminals.

FIFTH. Such a contract between carrier and shipper could have been made at common law and there is no direct or indirect prohibition against it in the Interstate Commerce Act.

SIXTH. The general provisions of the Act as to giving "undue or unreasonable preference or advantage," or as to subjecting to "undue or unreasonable prejudice or disadvantage" have no application, as there is no evidence in the record to support the claim that any shipper was prejudiced or given any preference by the exercise of the right of routing. On the contrary the evidence is that shipments of oranges were given the right of way over all other freight and that the same rights were accorded to all orange shippers alike.

SEVENTH. The record contains no evidence whatever to sustain the contention that the condition of the joint tariff as to routing was a traffic pool as held by the court below.

EIGHTH. Before the joint tariffs containing the clause as to routing by the initial carrier were filed, shippers did not exercise the right of routing, but sold such right for the largest rebate they could obtain from the private car lines.

NINTH. The routing clause in the joint tariffs was agreed to by the carriers for the purpose of destroying the practice of giving rebates by the Eastern lines through the private car lines to the shippers and thereby creating an

undue preference to one shipper as against another, and the rebate practice was broken up by the adoption of the routing rule.

TENTH. The complainants in this case before the Interstate Commerce Commission had received large rebates prior to the routing of the oranges by the appellants, one of them having received $175,000 in four years, and the loss of such rebates was the reason for the institution of these proceedings.

THIRD POINT.

The judgment of the court below should be reversed.

R. S. LOVETT,
MAXWELL EVARTS,
Of Counsel for Southern Pacific Company.

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Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 158 (with Nos. 159, 160, 161, 162).

The Southern Pacific Company, the Atchison Topeka and Santa Fe Railway Company, the Santa Fe Pacific Railroad Company, and the Southern California Railway Company,

Appellants,

vs.

The Interstate Commerce Commission.

BRIEF FOR APPELLEE.

STATEMENT.

Object of Suit.

The purpose of this bill in equity [R. 8-84] brought by the Interstate Commerce Commission against the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company, and its constituent corporations, is to enjoin the defendants, common carriers

engaged in interstate commerce, from violating and refusing to obey an order made by the Interstate Commerce Commission, requiring them to cease and desist from enforcing a rule and practice established by them on January 1, 1900, in and by which they, as initial carriers, assumed the absolute and unqualified right of *routing shipments of citrus fruits over lines of railway connecting with the lines of defendant, they all being established routes* designated and laid down in the joint tariffs filed with the Interstate Commerce Commission by the defendants and their eastern connecting lines. [R. 83, 84.]

The Atchison, Topeka and Santa Fe Railroad Company, and the Southern Pacific Company, defendants, own, operate or control the only lines of railroad from Southern California to the east, connecting with lines in eastern states and in Canada, excepting a line called the "Salt Lake Railroad", put in operation since the trial of this cause in the Circuit Court, which operates a line of railroad running over the Atchison rails from San Bernardino to Barstow, and thence over other lines to Salt Lake City.

The Interstate Commerce Commission, in its findings and report, upon which this suit is based, and which findings will be more specifically hereinafter referred to and reviewed, show in substance:

(1) That prior to the year 1900, shippers of citrus fruit generally exercised the control of their freight over lines of railroad connecting with the defendants' railroads, and in pursuance of a universal practice they exercised the right of diverting cars to different points,

after leaving the place of shipment, and that this practice of diversion was necessary to the control, protection and sale of the fruit.

(2) That prior to the year 1900 there was active competition between the defendant railroads, and the published and official tariffs were cut by the payment of rebates.

(3) That a combination or arrangement was formed about the year 1900 between the two systems of railroad, to equally divide the orange freight traffic out of California, and also to divide the entire volume of freight over connecting lines of these two systems by certain percentages, and that the freight was so divided by those lines between the initial lines, and their connections from January, 1900, down to the trial of this cause.

(4) That the rule and practice of the defendants, reserving control over the routing of freight over connecting lines, which lines are laid down in the tariffs of the defendant railroads on file with the Commission, is in violation of the statute in refusing shipments over designated routes, at the tariff rates, and is also discriminating in its effects, as to commodities, shippers and localities, and that such rule or practice was put into effect in order to effectuate a traffic pool and division of freight over connecting lines, and to destroy competition.

The order of the Commission to the defendants to desist from enforcing the routing rule was disobeyed and thereupon this bill was filed.

Proceedings in Circuit Court.

The defendants filed demurrers to the bill for want of equity and for non-joinder of parties defendant. These were overruled. [R. 91.]

The court sustained its ruling upon the demurrers by an opinion. [R. 1017, 1024; 123 Fed. R. 597.] Answers to the merits were then filed and testimony taken upon the merits.

It was stipulated between counsel that either party might introduce in evidence subject to objection, any part of the testimony taken before the Interstate Commerce Commission in the cases out of which this cause arose entitled Consolidated Fordwarding Company and Southern California Fruit Exchange v. Southern Pacific Company, *et al.*, numbers 575 and 576. [R. 146, 147.] Both parties introduced parts of such testimony, but as it was very voluminous, only a small portion of the whole was presented. Further original testimony was taken by both sides in the Circuit Court.

Upon final hearing the Circuit Court directed a decree in favor of the complainant enjoining defendants from violating the order of the Commission. [R. 111-113.]

The court below supported its decree upon final hearing by an opinion. [R. 1024-1047, also 132 Fed. R. 829.]

Appeals were taken by defendants directly to this court under the provisions of section 2 of the Act of February 11, 1903, and section 3 of the Act of February 19, 1903.

See I. C. C. v. Baird, 194 U. S. 25, 35.

The defendants at the time of their appeal to this court sought to secure an order of the Circuit Court superseding the operation of the decree pending such appeal, which was denied. [R. 1063.] The Circuit Court also filed an opinion upon the application of the defendants for a supersedeas. [137 Fed. R. 606.]

Railway Systems of Appellants and Situation of Orange Industry.

The Southern Pacific Company, at the time these proceedings were commenced, was, and still is, operating a line of railroad from Los Angeles, California, easterly to Galveston and New Orleans, connecting with numerous lines to the north and east; and also a line from Los Angeles northerly to San Francisco, and from thence east to Ogden, Utah, there connecting with the Union Pacific Railroad; and also a line from San Francisco northerly to Portland, Oregon, there connecting with railroads running to the eastern states.

The Atchison, Topeka and Santa Fe Railway Company and its constituent companies were then and still are operating a railroad from Los Angeles to Chicago, connecting in various states and territories and at Chicago with other lines of railway running to all parts of the United States; and also a line of railroad from Los Angeles northerly to San Francisco, there connecting with other lines running into various parts of the United States.

These two systems of railways have numerous lines running from Los Angeles to various nearby points upon the Pacific coast, connecting there with wharves, among

others Port Los Angeles, Redondo, San Pedro and San Diego.

These two railway systems control and operate all of the lines of railroad from Southern California to points on and east of the Missouri river.

The findings of fact of the Interstate Commerce Commission upon the subject of market prices, mileage and rates, in evidence in the present case, are in part as follows:

> "A car of oranges is stated to sell in the eastern markets for as high as $1,000 and sometimes as low as $300. * * * *
>
> 11. The blanket rate of $1.25 per 100 pounds amounts to 90 cents per box of oranges on an estimated weight of 72 pounds. The actual weight of a box of oranges is about 78 pounds. A car-load of oranges containing 26,000 pounds, the minimum car-load weight, gives the carriers a total revenue of $325 per car. Add to this the icing charge which is $60 to Kansas City, $75 to Chicago, and $90 to New York, and the total charge paid by the shippers amounts to $385 to Kansas City, $400 to Chicago and $415 to New York. The following table shows the rates per ton per mile resulting from these charges from Redlands, Cal., to Kansas City, Chicago and New York, via the short lines, the Santa Fe and its connections:

From Redlands, Cal., to	Distance. Miles.	Rates per ton per mile from transportation charges only. Cents.	Rates per ton per mile, including icing and transportation charges Cents.
Kansas City	1,758	1.422	1.684
Chicago	2,216	1.128	1.388
New York	3,129	.799	1.02

> The average rate per ton per mile upon all freight for all roads in the United States during the year ending June 30, 1900, was .729 of a cent." [R. 69, 70.]

The average haul for oranges was 2500 hundred miles, and the average railway tariff was therefore about one cent per ton a mile, although the freight was handled in car-load lots and often in train loads.

The average haul for all freight in the United States is only 240 miles [Statistics of Rys. I. C. C. Rep. 1902, page 64] which rate *per ton mile* is usually reduced as the distance which the freight is hauled is increased, and the tariff rate is usually reduced also as the volume of freight is increased.

The shippers of citrus fruit were therefore paying about thirty per cent. more *per ton mile* for freight shipped in car-load and train load lots 2500 miles, than the average shippers of the country were paying for freight of all classes shipped an average distance of 240 miles.

While this was the situation of orange growers their burdens were enormously increased by the routing rule complained of.

The supplemental report of the Interstate Commerce Commission, in the proceeding before the Commission out of which this case arose, which supplemental report is not in evidence here, but which it is assumed the court may take judicial notice of as being an act of an important bureau of the Executive Department, contains the following:

> "The average yield of an orange grove is about 200 boxes per acre and upon this basis the investment cost is 35 cents per box. The cost per box of oranges for cultivation, irrigation, fertilizing, picking, sorting, packing, boxing, hauling and selling is about 75 cents per box. *The total cost to the grower is therefore, on the average about $1.10 per box.* Compared with the free on board prices in

California *the grower made 30 cents a box in 1901-1902 and lost 10 cents a box in 1902-1903.* On the other hand, the price of oranges per box in the east in the latter year ranged from $1.75, when the market was glutted, to $3 for the best grade during the Christmas holidays. *The average price in the east that season was approximately $2.20 per box.* The rate of $1.25 per hundred pounds is equal to 90 cents per standard box of 72 pounds. This added to the above estimated cost of $1.10 for production and placing on board cars makes a total of $2 per box. This does not include the cost of refrigeration in transit. The testimony, though by no means uniform as to cost of production and prices, fairly warrants the use of the foregoing as approximate figures. The estimate of cost to the grower is low rather than high and liable to be increased by frost, ravages of the scale pest, and deterioration of the groves. To this may be added something for increase in the cost of labor.

The rate of $1.25 has been in effect approximately the whole time since this citrus fruit industry became the subject of any considerable movement by rail to eastern cities. It is as high today upon oranges (which constitute the great bulk of citrus fruit shipments) when the shipments aggregate between 20,000 and 30,000 cars annually as it was when but a few hundred cars were moved during the season and when the rate as applied to that movement was low."

Consolidated Fordwarding Co. v. Southern Pacific Company, 10 I. C. C. Rep. 594, 595.

In its said supplemental report the Commission found the rate of $1.25 a hundred excessive and unreasonable.

The defendant carriers both had contracts with the so-called "private car lines", in and by which citrus fruit was carried in ventilator and refrigerator cars, and in addition to the tariff rate of $1.25 a hundred, amount-

ing to $325 a car, the car lines, under their contracts with the railways, exacted a charge varying from $50 to $100 a car for icing citrus fruit en route to eastern points.

The total freight paid by the orange shippers, including icing charges, amounts to from nine to twelve millions of dollars a year. In some years the growers make a little money but in other years the railways take the entire crop value.

These facts contained in the reports of the Interstate Commerce Commission above mentioned are referred to as showing in part the extreme hardship toward the orange growers, and the unreasonableness of the exactions of the railways *in enforcing a practice by which they took the control of the freight away from the orange shippers and arbitrarily routed it over any line which the carriers might designate in order that the railways could effectuate a pool of their earnings and a division of their freights.*

Railway Rates Fixed and Maintained by Combination.

Prior to January 1, 1900, there was active competition between the defendant lines and between their eastern connections, for the citrus fruit business.

The rates were fixed and established by a combination between the defendant railroads and their numerous eastern connecting lines, by means of what they designated as a "joint tariff", filed with the Commerce Commission, and which rate was maintained by agreement between them, through the Railroad Association called

the Transcontinental Freight Bureau, and was further governed by the provisions of the Interstate Commerce Act which was a part of the contract, and the provisions of paragraph 6 of section 6 of that act, prohibit any advance in rates except after ten days notice, and forbids reduction except after three days' notice.

By this arrangement the rates were fixed by these competing lines at $1.25 a hundred on January 1, 1900, and ever since been maintained.

The joint tariffs of the defendants and their connecting lines, showing rates so fixed and maintained by simultaneous action between these competing roads, are in evidence in the case. [R. 466, 474, 357.]

F. M. Nadal, who handled the diversion of cars for the Southern Pacific system, with offices in Chicago, testified as follows:

"Q. Does the Transcontinental Freight Bureau have anything to do with the citrus fruit traffic?

A. It publishes the tariff.

Q. It publishes the tariff on citrus fruits?

A. Yes, sir.

Q. How long has the Transcontinental Freight Bureau to your knowledge, been in operation, and what is the scope of its business?

A. Well, this organization has been in operation ever since I was connected with the company—in 1896—and I suppose previously, some organization. Whether it was under the name of this bureau or not I can't say.

Q. Who composes the Transcontinental Freight Bureau?

A. The officials of all of the lines parties to the tariff.

Q. Where do they meet?

A. Well, they meet at different points. Some-

times in Chicago, sometimes in Milwaukee, sometimes in San Francisco.

Q. Where do they generally meet?

A. I think at Chicago more often than elsewhere.

* * * * * * * * * * * * * *

Q. Well, what does Mr. R. H. Countiss have to do with the Transcontinental Freight Bureau?

A. Why Mr. Countiss is appointed by the different lines as the agent. He compiles the rates, submits propositions by correspondence to the different lines in interest, and they vote upon the question at issue.

Q. Changes in tariff rates, joint tariff rates, filed with the commission, are made, then, through the Transcontinental Freight Bureau?

A. Yes, sir.

Q. State, if you know, how changes in rates are consummated.

A. Well, if a shipper wants a reduction in rates he submits a proposition to some of the lines, and it is submitted to the bureau, and he issues a circular—

Q. Who does?

A. Mr. Countiss. Sends that to the different members of the bureau, and they make their replies, objections, affirmative and negative votes." [R. 304, 305.]

Rates Maintained by Intimidation.

These so-called joint rates, arbitrarily fixed between these "competing lines" were maintained by punishment, inflicted upon any line which offered competition in rates or service, or, in the language of Mr. Sproule, traffic manager of the Southern Pacific, in "cutting the rate", by expelling such railroad from the association, withdrawing from it all through business, and isolating it so as to make it in effect a local line. [R. 936, 937.]

Mr. Bissell, of the Atchison, testifies to the same effect. [R. 884.]

Also Mr. Morton. [R. 127]

The facts found by the Interstate Commerce Commission [R. 55-77] were thoroughly supported by additional testimony taken in the Circuit Court, and the Circuit Court in its final decree found and adjudged as follows:

> "That the allegations of fact made in the bill of complaint herein are true." [R. 112.]

The bill of complaint set forth as a part of it, the report and findings of fact of the Commission, *and also expressly averred that the routing rule of the defendants, before mentioned, was discriminative in its operation, and was in violation of law.* [R. 10, 11, 12.]

The findings of fact of the Interstate Commerce Commission also contain the following:

> "The defendant carriers have in effect a common tariff on citrus fruits from Southern California shipping points to the Missouri river and points east thereof. This joint tariff fixes a single or blanket rate of $1.25 per 100 pounds to practically all points on and east of the Missouri river, and names 183 participating roads, which are classified in the tariff as western roads, New England roads and roads in Trunk Line and Central Freight Association territories. Thirty-one carriers in southeastern common-point territory are also named."
>
> * * * * * * * * * * * * *
>
> "The tariff prescribes the following general rules" * * * * *
>
> " '*In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving the guarantee. In accordance with this rule,*

agents will not accept shipping orders or other documents, if routing instructions are shown thereon. Neither will agents accept verbal routing instructions.'"

* * * * * * * * * * * * *

"Although control of the routing was first reserved to the initial carriers in the tariff effective November 15, 1899, the testimony indicates that the rule was not made effective until January 1, 1900. Prior to January 1, 1900, shippers were permitted by the defendants to exercise the right to control the routing and to divert the freight from the destination point or route named in the billing."

* * * * * * * * * * * * *

"For seven or eight years prior to 1900 the shippers of citrus fruits from Southern California to competitive points in the east received rebates ranging from $15 to $25 per car, which were paid in a great many cases by the car-line companies. The published refrigerator charges were exacted and subsequently the 'allowance' was paid back to the shippers. The eastern connections of the defendants also paid these rebates or a part of them through their representatives direct to the shippers. These eastern connections are also shown in some cases to have paid the car-line companies more than the actual car mileage charges, in order, as Mr. Earl, of the Continental Company testified, to help out the car-line in paying the rebates.

The payment of these rebates was well known, and they were made generally to all shippers. Rebates were paid when the car was not refrigerated as well as when it was, though they were greater when refrigeration was used. The average rebate was $15 when not refrigerated and $25 when refrigerated. It appears that the eastern connections of the defendants were willing to pay these rebates, or their shares of them, in order to have the traffic routed over their lines." [R. 58, 59, 65, 66.]

Establishment of Routing Rule.

Railways combine to destroy competition, and reduction of rates, by pooling earnings and dividing freights by percentages by means of controling the routing.

Notwithstanding the quite efficient mode which these "competing" carriers had of *establishing and maintaining rates* in violation of the Interstate Commerce Act and the Anti-Monopoly Act of July 2, 1890, there still was considerable competition between them to secure the orange business, it being so extremely profitable, and to secure such business, rebates were paid by the railways to shippers, although the established rate on file with the Commerce Commission was not upon its face reduced.

The Interstate Commerce Commission found to the effect that the routing rule was established by the defendants to promote and carry into effect a scheme for the division of earnings and of freights, and to prevent competition, and these findings were abundantly supported by the evidence, and these facts were also found by the Circuit Court.

The Commission found as follows:

> "The defendants claim that the rule reserving to the initial carriers the right to route the traffic was necessary to enable them to secure a discontinuance of a practice of paying rebates which prevailed previous to the establishment of the rule, and which is referred to in another part of these findings. Just how the rule actually operates to prevent rebate payments by connecting lines or others is not disclosed. The situation warrants the inference, however, that *these two initial carriers or systems, connecting*

with other carriers at various points, and they in turn connecting with numerous other carriers as shown by the tariff, are able by acting in concert, and routing as they see fit, to only send traffic over the roads of such carriers as fulfilled an agreement to refrain from making any rate concession to the shippers, and some influence of like character could doubtless be exerted by them upon the car lines which are also hereinafter referred to." [R. 62.]

"The complainants allege that these carriers pool the business and divide the net proceeds or revenue. This is denied by the defendants both in the answers and testimony submitted on their behalf.

It does appear, however, that these two systems endeavor to preserve the equal division of this traffic, and with both carriers acting together to secure that result one efficient means to such end would be the operation of their tariff rule reserving to themselves the routing of the freight to eastern destinations as they see fit." * * * "It was admitted by Mr. Stubbs, the traffic manager of the Southern Pacific, at the hearing in Washington that the way the cars were apportioned between the car lines by the railroad company may be called a division, but he claimed that it was not an unlawful division." [R. 67.]

"The routing circular of January 20, 1900, extracts from which appear herein in connection with the finding as to the rule of the carriers reserving to themselves the routing shows that the orange shipments are forwarding by the initial carrier so as to give certain percentages of the traffic to connecting lines." [R. 68.]

The conclusions of the Commission, which, however, are in part statements of ultimate facts, are as follows:

"It further appears that a tonnage pool of this traffic as between the connecting carriers not defendants was established and that the defendants so control the routing as to give specific percentages of this traffic to their several connections, thereby

fulfilling and giving effect to this unlawful and forbidden arrangement.

Reason is found in the facts shown for the belief that the suppression of the practice of allowing rebates was only an incidental result of and was not the primary or principal object of the defendant carriers in taking over to themselves control of the routing beyond their respective roads, but that the object was to give effect to the tonnage division before stated between their connections." [R. 74, 75.]

"Our conclusion is that the practice of the defendant carriers in denying to the shippers the use of their transportation facilities *by the established routes* is in violation of the statute and, in its application by the defendants to the traffic in question subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage, and gives to the carriers an undue and unreasonable preference and advantage." [R. 77.]

Prior to the year 1900 there was an actual reduction in the tariff rate on oranges by means of the payment of rebates.

These rebates were paid not only by the connecting lines of the defendants, but were also paid by the defendants themselves.

The method of paying the rebates, without having such payments appear upon the face of the books, was to make fictitious allowances from the railways to the car-lines, by which the car lines were paid for a so-called "excess" of mileage which had not in fact been earned, and the money so allowed was then used by the car-lines to rebate to the shippers.

Mr. Chambers, general freight agent of the Atchison Railway lines, explains how it was done in the following language:

"Q. To whom did the car lines pay these rebates?
A. They paid them to the shippers.
Q. And do you know where they got the money?
A. Got the money from the railroads.
Q. In what way, if you know?
A. Well, generally the plan was to get an ***excess mileage,*** that is, additional mileage, allowance. The standard mileage for private car lines is three-quarters of a cent west of Albuquerque. That is speaking for the Santa Fe. And east of Albuquerque it was one cent a mile. This allowance was made to all private car lines handling perishable freight. Now, the lines east of Ogden and El Paso paid one cent per mile. The car lines would arrange with the railroads for an allowance, say, of a cent and a half a mile, and agree, in consideration, that they would give the railroads a certain amount of business. And out of that *excess mileage allowance* they would pay the shipper. They would go to the shipper and contract with the shipper for the routing of his business and route the business over the lines with whom they had arrangements for additional mileage.
Q. *Then the railroad company would pay to the car line an excess per mile on the mileage of the cars?*
A. *Yes sir.*
Q. And that money was used by the car line to pay rebates?
A. To control it.
* * * * * * * * * * * * *
A. * * * * That year I think the Arlington Heights Fruit Company controlled about five hundred carloads of citrus fruit. I then called on the manager of the Continental Fruit Express, to find out what the trouble was and I soon learned. He said to me that if the Santa Fe Railroad would allow the Continental Fruit Express excess mileage amounting to ten dollars per car to Kansas City and twelve dollars and a half per car to Chicago that the business of the Arlington Heights Fruit Company would be sent over the Santa Fe lines; other-

wise the Continental Fruit Express could not afford to let the business go over the Santa Fe lines, as they had contracted to pay the Arlington Heights Fruit Company a certain amount per car for the routing. The case of the Arlington Heights Fruit Company is a fair example of all the other business.

* * * * * * * * * * * * * *

Well, we were obliged to meet the situation. We had to satisfy the Continental Fruit Express, and we did so and got the business." [R. 890, 891, 892.]

Mr. Sproule, traffic manager of the Southern Pacific Railway, explained the matter as follows:

"A. They (the Atchison Ry.) wanted us to join them in meeting the competition as they found it. The competition that our connections found was as much the competition of our other railroad connections, their competitors although our connections, as it was the Santa Fe. *But by this time the demoralization had spread so that there was no line handling oranges except the line that would pay these rebates, whether by car mileage or other devices; generally, as I have stated, car mileage.* It can be laid down that every road east of Ogden, El Paso, and Albuquerque that was handling oranges was being bled."

* * * * * * * * * * * * * *

"Q. The idea was the restoration of a normal tariff, was it not?

A. The restoration of the tariff that they had joined us in making and out of which they expected to get their stand—their regular percentage of revenue in accordance with the current division sheets. *Instead of that, there was a published tariff under which they were supposed to be doing the business, and in relation to which the effect of it was that it was another tariff altogether,* because there had certain slices to be cut off of it in order to pay these illicit rebates, and the business, consequently, was done by our connecting roads, at a reduced figure, lower revenue." [R. 918, 919.]

Mr. Bissell, assistant traffic manager of the Atchison Railway, said:

"A. *Why, I suggested to them (eastern lines) that if the initial roads exercised their right of control of this freight, that it would do away with the payment of rebates and would relieve them from the tribute that was being exacted by the car lines, for the reason that there would be no inducement then to pay any rebates because they could not tell whether they would get the business after they agreed to pay the rebates;* that is, they might agree to pay rebates on certain business and it might move over other lines, being made good to them by some other business on which they had no arrangements."

* * * * * * * * * * * * *

"Why, the car lines were operated over the two routes from California. They were free, at that time, to make arrangements with any lines that connected with the Santa Fe at any junction, and the natural result of that was that as the rebates grew in volume the Santa Fe Company was deprived of the long haul; the business would be diverted from our line at Kansas City, for instance, instead of going through to Chicago, or it would be diverted at Pueblo instead of going through to Chicago; and while I don't think that our competitors, the Southern Pacific, were paying any rebates at that time, the result of it was that their connections were paying rebates, and that necessitated the extension of the rebate system west over the Santa Fe lines to a point that was equal with the point of junction of the Southern Pacific with its connections. For instance, if the Union Pacific and the Rio Grandes were paying rebates through the car lines on business routed via Ogden, that brought the maintenance of rate back to the Ogden gateway, and we had to equalize on our lines, say, at Albuquerque."

* * * * * * * * * * * * *

"On a car of oranges moved from Los Angeles to New York there was $15 a car, we will say,

paid east of Chicago. As long as that was all the rebate there was paid, it didn't affect the Santa Fe nor the Southern Pacific. And then, we will suppose that the line between Chicago and Omaha came into the field and added $10 more or $5 more, we will say, and then the line from Ogden to Omaha added another $5; that would make $25 to New York via the Union and Central Pacific, while via our line, there would only be the $15 unless the connections east of our junctions added something to make that good. Of course you understand that the rebate—the result of the rebate system is that when it was vogue that we all gave away so much money and got down to a parity; in the end, we were no better off than we were on the start. Now, the Santa Fe had—if they wanted to keep the freight hauled through on their line to Chicago, they had to assume in some manner the payment of this extra $10 between Albuquerque and Chicago, bringing it up to $25, which, in the case I have outlined, would be the rebate via the Ogden line, and we had to equalize it."

* * * * * * * * * * * * * *

"Q. Had the business of citrus fruit shipping been leaving you before you established this practice of routing?

A. Yes, sir. WE MADE SEVERAL ENDEAVORS — WE TRIED THE COSTLY EXPERIMENT OF BEING HONEST IN THIS THING, LIVING UP TO THE LAW AS WE UNDERSTOOD IT AND DECLINING TO PAY REBATES; AND WE LOST SO MUCH BUSINESS THAT WE FOUND WE HAD GOT TO DO AS THE ROMANS DID, AND AS THERE SEEMED TO BE AN IDEA THAT THE CAR LINES WERE EXEMPT FROM THE INTERSTATE LAW, WHICH PROVIDED IMPRISONMENT FOR RAILROAD MEN CAUGHT DOING THIS THING, WE HAD TO ARRANGE TO DO OUR BUSINESS THROUGH AN OUTSIDE CAR LINE.

Q. Did you have a car line operating on the Santa Fe?

A. Well, we had—we didn't have an outside organization until this rebate business came up. We then provided an outside organization and leased our cars to it in order to endeavor to hold the business to us that we thought rightfully belonged to us." [R. 864, 865, 866 and 868.]

Mr. Morton, second vice-president of the Atchison Railway in charge of freight traffic, testified as follows:

"A. The rate from Riverside, California, to New York city is $1.25 per 100 pounds of oranges in car load lots. The connections of the Southern Pacific between Ogden and the Missouri river would pay $15 per car, and the connection between the Missouri river and Chicago would pay $10 a car. That was $25 a car that the Atchison railroad would have to pay or forego the business. It did not make any difference to the Atchison system whether the cut in the rate was entirely west of Ogden or whether it was east of Ogden or at El Paso. It made no difference to it whether the cut was made by the Southern Pacific or by some connection of the Southern Pacific. *So far as the cuts in the rate east of Chicago were concerned, we generally were able to secure for oranges moving over our line the same concession that was made on oranges originating on the Southern Pacific coming east by the Southern Pacific. Do I make myself plain?"*

* * * * * * * * * * * * * *

"Now, it cost our car company the last year, the year preceding 1900, quite a large amount of money to meet this competition, and shippers in Southern California who did not get the full benefit of this reduction and who had to divide it with Mr. Earl and others, naturally were indignant, and it was in order to prevent that state of affairs solely and for no other reason in the world than to maintain legal rates that we took the routing of this business into our own hands." [R. 121, 122.]

Also as follows:

"A. There was a general understanding, so far as the roads east of Chicago are concerned, that if any of them cut the rate after the first of January, (1900) they would be deprived of business.

Mr. Dunlap: 'Cut it', how; by rebate?

By Mr. Norton:

Q. What do you mean by 'cut it'?

A. I can't explain any more. If you don't understand I can't explain it. You know what cutting a rate is, don't you?

A. I wanted to get the explanation on record By giving a rebate you mean?

A. Certainly. This cutting of rates was all done secretly. There was no publication of tariffs or anything of the kind. It was all in violation of the interstate commerce act.

Q. And in violation of your published tariff?

A. And in violation of our published tariff.

Q. That is what I wanted to get at. Now, you stated that the sole purpose of assuming control of the routing was to do away with the condition that you have described?

A. That was, I won't say the sole purpose, but the chief purpose. *I might say the sole purpose was to maintain our rates.*" [R. 124, 125.]

Mr. Barnwell of the Atchison Railway also testified that the "Routing Rule" was devised "to prevent the cutting of rates" and that its operation did have that effect. [R. 453.]

To thus destroy competition the unlawful agreement and combination was made between the Santa Fe system, the Southern Pacific system, and their connecting lines, to abrogate the joint tariff on citrus fruit in force prior to November, 1899, and to place in effect a new joint tariff which was in fact filed and made effective January 1, 1900, [R. 456, 466] and further, to insert in the new

tariff a provision reserving to the initial carrier the absolute and unqualified right to route the freight, whereby the freight was to be arbitrarily divided and incentive to competition destroyed.

But before doing this, a meeting was held at San Francisco at which the initial and connecting lines were all represented, and at which meeting the following letter was transmitted to all the connecting lines over 200 in number, from the joint agency of the Southern Pacific and Atchison systems, signed by R. H. Countiss, agent:

"8593.

Representing

SOUTHERN PACIFIC CO., UNION PACIFIC R. R., RIO GRANDE WESTERN RY., TEXAS & PACIFIC RY., SANTA FE SYSTEM.

San Francisco, Oct. 9, 1899.

CITRUS FRUIT TARIFF.

DEAR SIR:

At a conference held in this city on the 6th and 7th inst., at which the California terminal lines and their direct connections were represented, special consideration was given to Citrus Fruit Tariff, and in order to effectively promote the observance of the Interstate Commerce Act, thereby conserving the lawful interests of all concerned in the traffic, it was

Resolved, That current Citrus Fruit Tariff be cancelled November 14th, 1899, and taking effect November 15th, 1899, *Agent Countiss publish for each of the roads represented at this conference, a tariff in connection with specified routes, comprising roads that give express assurance that they will not deviate from the rates provided therein, directly or indirectly, by any method or device, whether in conjunction with carriers, shippers, consignees or car lines.*

In full assurance of their good faith, each road, in consideration of being made a party to the new tariff, shall give its assent to the cancellation of said

tariff so far as its own road is concerned, in event that rates are not absolutely maintained by it as contemplated in foregoing.

Further, said tariff shall bear the following lawful provision:

'In guaranteeing rates, the absolute and unqualified right of routing beyond its own terminal, is reserved to initial carrier giving guaranty.'

May I ask that you promptly advise me as to whether you will give the assurances which, under the above resolution, are requisite to representation to your company in the proposed new tariff and oblige,

Yours very truly,

(Signed) R. H. COUNTISS, *Agent.*

General Note: Indefinite or evasive responses will be construed as indicating an unwillingness to give the desired assurances." [R. 875-878.]

Mr. Bissell says that this letter and the joint tariff were agreed to by all the connecting carriers shown in the joint tariff of January 1, 1900. [R. 875.]

Mr. Countiss was the joint agent of all of the railroads, parties to the joint tariff of January 1, 1900.

Under date of December 21, 1899, Countiss as joint agent of the combined roads issued instructions to all lines. [R. 797-799.]

Mr. Bissell naively said that the Santa Fe road "tried the costly experiment of being honest," and that the deal between the initial carriers and connecting lines, "was not one of those things that you wanted to write about very much," and yet, these competing lines were, bold enough to meet together in violation of the Commerce Act, and agree upon a rate, and further than that, solemnly agreed "that they will not deviate from the rates provided therein, directly or indirectly."

The next step was for Mr. Sproule, traffic manager for the Southern Pacific, and Mr. Bissell, traffic manager for the Atchison, to send out the following telegram under date of December 19, 1899, to the connecting lines of the defendant railroads, distinctly stating that the operation of the routing rule was for the purpose of *"protecting your interests in the traffic at full tariff rates."*

"12-19-99.
Wm. Sproule, D. H. 7168.
W. A. Bissell, D. H. 8741.
E. F. Cost, C., C., C. & St. L. Ry., Cincinnati, Ohio.
James Webster, Nickel Plate, Chicago, Ills.
Sam P. Shane, Erie R. R., Cleveland, Ohio.
George B. Reeve, Grand Trunk Ry., Montreal, Que.
G. J. Grammar, L. S. & M. S. Ry., Cleveland, Ohio.
B. B. Mitchell, Michigan Central, Detroit, Mich.
E. L. Dawson, Pennsylvania Co., Chicago, Ills.
B. D. Caldwell, D., L. & W. Ry., New York City.
H. H. Kingston, Lehigh Valley, New York City.
S. B. Knight, Wabash R. R., St. Louis, Mo.
A. P. Bigelow, B. & O. R. R., Chicago, Ills.
A. S. Crane, Fitchburg R. R., Boston, Mass.
H. B. Chapin, Boston & Albany Ry., Boston, Mass
W. F. Berry, Boston & Maine, Boston, Mass.
S. T. McLaughlin, B. & O. S. W., Cincinnati, Ohio.

On and after January first, nineteen hundred, California terminal lines have made arrangements for routing the citrus traffic from California through to final destination. Have further arranged that no diversions shall be made without consent of terminal lines, and *have notified the car lines interested, who are agreeable to the changed conditions.* From this action you will see that if any special arrangements have been made by any lines east of Chicago or St. Louis looking to the control of the business either through car lines, shippers or any other source, that the results expected cannot be obtained thereby, and we would respectfully suggest their cancellation. This result

you will see is in line with giving the legal protection contemplated to all shippers alike and *protecting your interests in the traffic at full tariff rates.*

WILLIAM SPROULE.
W. A. BISSELL."

[R. 869, 870.]

To this telegram various answers were received by connecting lines, heartily co-operating in the plan to prevent "rate cutting" and to maintain the agreed tariff. [R. 870-875.]

These letters and documents conclusively establish a perfect combination between these two competing lines to fix, maintain and control rates and suppress competition.

By these unlawful combinations and arrangements, the rate was advanced over and above what was charged, in fact, in former years, and firmly fixed at the advance so made, but to destroy all inducement for competition in the rates thereafter, as well as in service, it was solemnly agreed between the defendants and connecting lines that the citrus fruit business should be divided over the connecting lines through the instrumentality of the initial carrier acting as a sort of arbitrator for the competing connecting carriers.

Southern Pacific Percentages.

In pursuance of the agreement mentioned and the resolution and letter of October 9, 1899, above mentioned, and of the provisions inserted in the joint tariffs of January 1, 1900, *the Southern Pacific Company issued to its agents, its private instructions prescribing the exact percentages of freight to be routed over each one*

of the numerous connecting lines of that system which connections included railroads in Canada. [R. 599, 715, 761.]

Atchison Railways Percentages.

The *Atchison, Topeka and Santa Fe Company,* in pursuance of the written agreements above mentioned and of the provision of the joint tariff of January 1, 1900, *also issued its secret instructions to its agents marked "private", dividing the business in citrus fruit among its connecting lines according to fixed percentages.* [R. 368, 384.]

The Atchison Railroad in these instructions to local agents fixing percentages of citrus fruit business over connecting lines, directs among other things, as follows:

> *"7. When a shipper asks for some particular delivery and you are satisfied that it is necessary to the business that it be given, and if the route is one authorized in this circular, you may write as the shipper desires so far as the delivering line is concerned. If any intermediate lines you will use each of them as will serve to divide the business in accordance with the proportion shown herein."* [R. 369.]

It thus appears that under no circumstances were connecting lines to be selected by the shippers which would in any way alter the percentages fixed by the Atchison Company and deliveries only by the delivering line were allowed where it would not result in any inconvenience.

The Southern Pacific Company has been equally specific in its "confidential" instructions to agents concerning the percentage of business awarded to connect-

ing lines and that company directs its agents that "preferred deliveries" may be allowed to shippers under certain circumstances, and also directs specific routings in certain instances, but expressly provides in the instructions that such *"preference should be considered in the percentage allotted, to those particular lines as per the above percentages, and not as an addition to the percentages above shown."* [R. 608.]

So that whatever may be said about the defendant carriers complying with "requests" of shippers as to deliveries or routings, such requests can only be complied with *in so far as they do not interfere with the percentages awarded to each connecting line.*

In other words, if one shipper requested his freight to go by B. & O. east of Chicago, such request may be granted provided enough freight remains to give the other roads their percentages, but that such request must be ignored if the routings or deliveries interfere with the percentages.

It has been contended by several witnesses on behalf of the defendant carriers that these percentages were not fixed and certain, but could be varied at any time by the initial carrier and that there was no agreement to give any road a certain percentage.

In answer to this it is submitted that even if the percentages were not fixed and invariable from year to year, yet if they are acted upon for a time the thing prohibited by the law will be consummated. The competition of connecting lines is thereby destroyed, and no reduction of rates or better service by the connecting line could give such line more business.

If the business is arbitrarily divided through the medium of the initial carrier, a monopoly is established and the incentive to competition in rates and in services taken away.

But the evidence establishes beyond question that when the percentages of all the connecting lines were fixed, taking effect January 1, 1900, that from that date down to the present time, there has been no substantial change in such percentages. [R. 234 bottom.]

No business has been taken away from any line for delay in transit, failure to return cars, refusal to exchange business, for expedited service, or for any other reason. [R. 234, 449 top, 885, 886.]

The claim made by the officers of the Southern Pacific, that they have always endeavored to extend to shippers and growers of citrus fruit, their paternal aid in selecting those routes for eastern shipments which are open and least effected by weather, and where the best service is given, is utterly repudiated in the instructions to local agents above mentioned. Instructions further provide:

> "On days when a few cars are shipped all may be routed via one route and via another route the next day, and so on, but the result to be as above, as near as possible." [R. 610.]

The complete details between the Southern Pacific and Santa Fe roads to divide the shipments through the routing rule is further shown by the instructions of the Santa Fe road providing for diversions from the Santa Fe lines at Colton and Los Angeles for freight destined to eastern points and providing for the routing of such

freight *by the Southern Pacific over its lines.* [R. 369.]

Division of Business Between Initial Lines.

While the citrus fruit industry in California is confined to a few places, and the entire acreage would probably not exceed 80,000 or 90,000 acres, equal to four congressional townships [R. 229] it was claimed by Mr. Sproule that the freight business in citrus fruit was nearly equally divided between the Southern Pacific and Santa Fe *by reason of division of mileage, each road having some 250 miles or a total of 500 miles in the orange district,* but it seems that these two systems have had as little difficulty about dividing railroad mileage or making paper calculations of such mileage, as they have had in dividing oranges. The testimony shows that the principal places where oranges are raised are in the vicinity of Redlands, Riverside, Corona, and Pomona, and something like 70 miles of railroad would reach all of these places, so that the pretended division of 500 miles is arbitrary and baseless.

Be this as it may, these two systems were not satisfied with their division of mileage but entered into an understanding or agreement to physically divide the cars of oranges shipped each season giving to each system one-half as nearly as practicable.

This division was mainly blocked out by a division of fruit car equipment and was then adjusted nicely by means of the "routing rule".

Mr. J. C. Stubbs, a vice president and "traffic director" for the Southern Pacific Company [R. 287] testified in a former hearing before the Commerce Commission,

and his testimony has been by stipulation introduced in evidence in the present case.

In that case Mr. Stubbs said in January, 1902:

> *"There is an understanding, but it is not in writing—you might say it amounts to an understanding that so far as the orange business is concerned we will endeavor to work an equal division of that traffic.* That arises from the fact that it is about so divided in its production on our local lines in California. There is about 50 per cent of that produced on the lines owned by the Santa Fe, and about 50 per cent produced on the Southern Pacific and so far as possible we agree that we shall not interfere with each other's local business." [R. 288.]
>
> See also Findings of Com., R. 67.

The division of fruit traffic between the Southern Pacific system and Santa Fe system so as to give half to each, was first blocked out through a division of car equipment.

The citrus fruit is carried in refrigerator and ventilator cars specially made for the traffic.

The Southern Pacific has an exclusive contract with the Armour Car Lines, by which the Armour Car Lines has the exclusive right to operate its refrigerator and ventilator cars over all the Southern Pacific system. [R. 293, 296.]

The Atchison system has an exclusive arrangement or contract with a corporation called the "Santa Fe Refrigerator Despatch", by which the "despatch" has an exclusive right to operate its refrigerator and ventilator cars over all lines of that system, and the Atchison, Topeka and Santa Fe Railway Company is the owner of all the stock of the Santa Fe Refrigerator Despatch, and

controls the operations of the despatch through officers selected by it. [R. 134.]

These fruit cars are to be furnished from time to time as demanded by the respective railroads.

The exact method of dividing the business is for the agents of the Southern Pacific and of the Atchison and Santa Fe to estimate the orange crop at the beginning of the orange season on November 1st, *and then each road determines what amount of the equipment will be required to transport one-half of such crop.* Each system then orders cars from time to time for *its half,* each one understanding that the other is arranging to transport half and no more, and thus carrying a half and half only by each line.

Mr. Edward Chambers, general freight agent of the Atchison lines west of Albuquerque, testified as follows:

> "The Santa Fe policy is to take 50 per cent of the business; that is, the proportion of the business that the officers that dictate the policy of the road say; that is, the instructions to myself as general freight agent, to see that we take 50 per cent of the citrus fruit business and all of our car supply our basis for car supply and for ice and all the arrangements we have to make in advance of the crop, are made on that basis.
>
> Q. That is the number of refrigerator cars and tons of ice?
>
> A. And the additional cars we may need over what was in use the previous season. Of course that estimate had to be given along in July or August, in case it is necessary to build new refrigerator cars, new ice houses, and get additional ice machines. * * * *
>
> We supply the cars as far as we can, the cars in the service that are ordered and that are in the service are moved regularly, with as much regularity

as we can move them, and when they are in California ready for loading, we supply them when they are ordered. We supply Santa Fe cars. When it gets to the place where we cannot supply all that are ordered or asked for by the shippers, we discriminate. We deliver the shipper when the supply of Santa Fe cars is exhausted—we tell him that if he cannot wait until we get cars, in the territory to supply him that we will order for him Southern Pacific cars, but I want to say that there are no Southern Pacific cars forced upon any shipper at all. *They voluntarily take them and load them after they have been told they cannot get Santa Fe cars.*

Q. If you do furnish them Southern Pacific cars, you ship over the Southern Pacific?

A. Yes, because those cars cannot run over the Santa Fe lines. There is no arrangement for them to run over our lines. All shippers understand how they move. * * * *

A. *The freight equipment about, as I said before—the car supply about divides the business just in the proportion I have stated.* * * [R. 187, 188, 190.]

Well, the instructions I have received is a fair share of the citrus fruit traffic for the Santa Fe lines—fifty per cent one-half of the business. [R. 197.]

Q. That division of the equipment works that result without any special effort?

A. It approximates that result. It don't work it out exactly. In the heavy shipping season it is a question of cars always for the three months, for March, April and May, and sometimes February. * * * [R. 197.]

Q. You estimate that the cars you provide for will handle one-half of the crop?

A. That is the basis, yes sir. [R. 198.]

We seek to move not more than fifty per cent. We base the order for cars on fifty per cent of the crop as estimated. [R. 214, 215.]

A. The Southern Pacific understands just what we seek to take.

Q. And you understand just what they seek to take?

A. Yes sir." [R. 215.]

Mr. W. B. Biddle, an officer of the Santa Fe Company said in regard to the testimony of Mr. Chambers:

"It is absolutely correct." [R. 221.]

Mr. W. G. Barnwell, freight agent of the Santa Fe system, testified:

"Yes, in a general way, when it comes to the matter of car supply we talk it over. If they are short of cars, or rather if we are short of cars, we will ask them to send their cars over and we will load them up and let them go back over the Southern Pacific, let them go east over the Southern Pacific. * * *

I said if we are short of cars we would take their equipment and load it on our rails and ship east via their line. * * *

Q. What do you do in case they are short of cars?

A. We do the same way if they will take them. They are there for them. We offer them the shipments of the cars if they want them, and those cars would go east over our line if loaded on their rails." [R. 451 and see 901.]

It is entirely obvious that the finding of the Commission above referred to, to the effect that these two systems, the Southern Pacific and Santa Fe, do endeavor to divide the citrus fruit freight business between them, and that they are greatly aided therein by the routing rule reserving to the initial carrier the right to route is fully established.

It is quite clear that if the shipper exercised the right of routing that he could route over any line he saw fit,

and the equal division of business would be done away with.

The record in this case is filled with testimony showing the unlawful and arbitrary action of the roads in dealing with shippers.

Very numerous witnesses have shown by their testimony that these two systems work a division of the citrus fruit business through the routing rule and car equipment by routing shipments over the line of road of the other, which ought to be a competing line. [R. 149, 152, 173, 228, 167, 168, 170, 174, 176, 238, 275, 187, 901.]

These witnesses state that during one period the Atchison Santa Fe system at one station diverted a third of its own cars to the Southern Pacific lines, shipping them east over the Southern Pacific [R. 173], and at another time half of the Santa Fe cars were diverted to Southern Pacific lines at a certain station or shipping point. [R. 238.]

Numerous witnesses testified, and the fact was established indisputably, that the Atchison Santa Fe system, having its own lines to Chicago, and being the shorter and more direct route, was greatly preferred by shippers, and that under normal conditions that system would naturally carry much more than half of the orange freight. [R. 179, 172, 173, 174, 239.]

Under the routing rule the shippers did not know, after the oranges left the depot, whether they went east over Southern Pacific lines or the Atchison Santa Fe lines, and frequently they were kept in ignorance of where their fruit was for several days, they not knowing whether it had gone by Sacramento and Ogden or

by Kansas City and Chicago, or by Galveston and New Orleans.

The operation of the routing rule alone made it possible for these two systems to work an equal division of the freight, and to nicely equalize the traffic and smooth the rough edges where the division of equipment did not exactly perform that function.

Actual Shipments by Southern Pacific and Santa Fe Show Nearly Equal Division.

The testimony shows that from November 1, 1897, to March 31, 1903, there was a total of 88,284 cars of citrus fruit shipped from Southern California to eastern points and that the Santa Fe carried during that period 45,037 cars [R. 180, 181], and during that period the Southern Pacific carried 43,211 cars [R. 283], showing that the Southern Pacific carried about one per cent less than an even half of the total number of cars. The proportion was about the same for remainder of 1903. For that period there were 20,748 cars. The Santa Fe carried 10,758 cars and Southern Pacific 9990 cars. [R. 137.]

In the face of this arbitrary and practically equal division the testimony further shows that shippers of citrus fruit generally preferred the Santa Fe system by reason of its own line to Chicago and its directness, and this was admitted by Mr. Chambers [R. 179], and proven by other witnesses. [R. 172, 173, 174, 239.]

It is submitted upon this review of the evidence that the findings of the Commission and decision of the Circuit Court to the effect that the routing rule is an essential and efficient means for carrying into effect an un-

lawful traffic pool between the connecting lines, and also to divide the freight between the initial lines, are conclusively established by the evidence taken in the court below.

It is further insisted on behalf of plaintiff, that no evidence entitled to weight has been introduced by the defendants, even tending to overcome the effect of these findings of the Commission as *prima facie* evidence.

Car Lines Aided Railroads in Dividing Business.

Mr. Earl, president of one of the car line companies which is now operated through the Santa Fe Refrigerator Despatch, testified in the year 1900 before the Commission, that of the three car line companies which monopolized both Southern Pacific and Atchison lines, that the business was divided between them as follows:

The Continental Fruit Express, 37½ per cent, the Fruit Growers Express, 37½ per cent, and the Santa Fe Refrigerator line, 25 per cent. [R. 152.]

At that time these three lines operated over both systems of roads.

Mr. Earl further testified as follows:

> "Q. Was there any percentage or basis of division between the car lines that year?
>
> A. Well, as I stated before, the railroads made their requisitions on the car lines to furnish cars from time to time. As the season progressed, and shipments were heavy, they asked for more cars. If the shipments were light, as they were at certain times in the 12 months, they asked for less cars, and whatever cars they had from the car lines determined the percentage each car line had in the business."

George B. Robbins, president of the Fruit Growers Express (Armour Car Line), wrote to Mr. W. Sproule, freight traffic manager of the Southern Pacific in the latter part of 1899 as follows: [R. 169.]

> "In this connection beg to state that in the interest of harmony, and for reasons which I will explain some time when I see you, I desire to suggest that it might be well for your company to take 250 more cars from the C. F. X., and the Santa Fe the same, provided always that the number of their cars used does not exceed the number of ours, either in your own or the Santa Fe's service."

The Commission expressly found, as follows:

> "It was admitted by Mr. Stubbs, the traffic manager of the Southern Pacific, at the hearing in Washington that the way the cars were apportioned between the car lines by the railroad company may be called a division, but he claimed that it was not an unlawful division." [R. 67.]

It is submitted that the case clearly establishes that a combination and arrangement exists between the Southern Pacific and Santa Fe systems, to divide their freight in citrus fruit in violation of the Commerce Act and that a further combination and arrangement exists to divide the freight originating on both these lines, between connecting carriers to give a certain percentage to each such connecting line, and that both of these unlawful combinations are made effective, through the rule reserving to the initial carrier the routing of freight.

The evidence clearly establishing this, is shown by the findings of the Commission, by the testimony of the officers of the Southern Pacific and Santa Fe roads, by the actual result of shipments for a term of years, and by the

testimony of numerous shippers showing a diversion of cars over one line to the other, and a shortage of cars first on one line and then on the other, compelling shipments over the other naturally competing line, and is corroborated by the testimony showing that the car lines have at all times aided in such division of business.

Routing Rule Discrimatory.

The findings of the commission sustained by the Circuit Court that the routing rule of defendants works an unlawful discrimination are fully sustained by the evidence.

The freight pool established by the routing rule suppressed competition in *service* as well as in rates.

Neither celerity of movement nor other competition could or would result in increasing the business of such line and the testimony conclusively shows it has not done so.

The natural result was that the time in transit has been increased since January 1, 1900, showing that the routing rule discriminates against orange shippers, against the orange industry, and against this locality.

The Commission found:

> *"It is testified, however, and we so find that the time used in transportation to eastern markets, was greater in 1900 than it was in previous seasons."* [R. 71.]

General statements have been made by officers and agents of the defendant roads, to the effect that since the operation of the routing rule the business has been much

more satisfactory to the companies and that freight has moved with less friction and some general statements were also made that the time in transit had improved, but these witnesses produced no statistics showing the real facts.

On behalf of complainant the testimony of A. H. Naftzger, president of the California Fruit Agency, which handles most of the citrus fruit business in Southern California, was taken, and Mr. Naftzger produced a table showing actual shipments from Southern California to eastern points embracing the period from December, 1895, to May, 1896, which was for a season prior to the routing rule, and also the period from December, 1901, to May, 1902, which was under the routing rule [R. 981, 984.]

This table shows that the actual time in transit since the routing rule has been increased from three to four days.

For instance, the average time to Buffalo by the Atchison prior to the routing rule was 9.54 days and since the routing rule the average time was 11.90; to Boston prior to routing rule time was 11.56 days, and under routing rule 14.51 days; to Chicago prior to routing rule was 7.36 days, and under routing rule was 9.32 days.

All these shipments embraced in Mr. Naftzger's table were of undiverted cars.

On cross-examination Mr. Naftzger was asked why he selected the periods named for comparison, and he answered as follows:

> "A. Well, we took 1895 and '96 because we had absolutely accurate records for that season of the movement as reported to us by the carriers them-

selves; that is, the passage of the cars at junction points. We took the year 1901 and '2 rather than the year 1900 and '01, because that was the year when the Santa Fe had its coal strike."

"1900 and 1901 was the year of their coal strike and our crop was very large." [R. 983.]

So the periods selected for comparison were most favorable to the railways, they not being affected by coal strikes or by large crops.

The testimony of numerous other witnesses shows that the routing rule operates to destroy competition as to time in transit. [R. 148, 227, 236, 274, 275, 225, 255.]

Other Discriminations.

Routing rule results in car shortage by reason of operation of arrangement to equalize traffic between roads, and is therefore an obstruction to commerce.

Numerous witnesses show by their testimony and have given particular instances where, under the operations of the routing rule, to divide the freight, car shortage is a chronic condition over both systems, obstructive to commerce and causing great losses to orange shippers [R. 149, 152, 173, 228, 168, 176, 238, 255, 275, 187.]

Routing Rule Prevents Reduction in Rates and Competition Generally.

The findings, the testimony of the officers of the two systems and the correspondence, heretofore set forth, show that the routing rule was put into force to *prevent competition and to maintain the rates.*

Routing Rule Interferes with Diversions of Cars and Sales.

The universal practice has been for shippers to divert cars en route to any points within the territory to which the tariff rate of $1.25 per hundred applies. [Findings I. C. C. R. 60, also R. ev. McLeod 237, 238.]

Mr. Naftzger testifies from actual records, covering a whole season, that of all fruit cars shipped the average diversions amounted to six-tenths of a diversion to a car; in other words, that 60 out of every 100 cars were on an average diverted once. [R. 983.]

These figures from actual records do not harmonize with the general opinions indicating that diversions were numerous.

Shippers agree that under the operations of the routing rule the right of diversion is interfered with and sales are prevented. [R. 257, 274, 152.]

Routing Rule Operates to Send Shipments Over Undesirable Routes Affected by Bad Service.

As to this all shippers agree. [R. 238, 275, 227, 274, 225, 255.]

The Routing Rule Discriminates Against a Commodity to wit: Citrus Fruit.

The evidence shows that except as to citrus fruit the routing rule has not been practiced by the defendant carriers as to interstate commerce generally, and only in special instances for special reasons, has routing been refused over any particular line as to any other com-

modity. [R. evidence of Bissell, 885; evidence of Chambers, 202; evidence of Barnwell, 451, 452; evidence of Morton, 127.]

[Findings I. C. C. R. 62 middle.]

Routing Rule Discriminates Against a Locality to wit: The California Citrus Fruit Belt.

The citrus fruit tariff shows that the routing rule applies only to Pacific Coast points. [R. 357, 368.]

In conclusion of this point, it is submitted that the findings of the Commission and evidence clearly proves that the operative effect of the routing rule was unreasonable, unjust and discriminative; (1) in refusing to the shippers control over their shipments; (2) in interfering with diversions and sale of fruit, the practice of diverting being one of universal custom; (3) in preventing shippers from having knowledge of routes; (4) in wresting control of the shipments from the owner, which he needs for prudent protection of his own property; (5) in denying shippers the shortest and best routes; (6) in resulting in delays in transit; (7) in resulting in shipments over bad lines affected by weather; (8) and in preventing proper marketing of fruit.

General Results Accomplished Under the Routing Rule:

The report of the Interstate Commerce Commission, in its conclusions, portrays in vivid language the results attained by this astonishing and unjustified combination of these two railway systems in violation of the laws of the country, by which they have seized upon one of the

most important industries, having an output of over 24 millions of dollars a year, and have practically appropriated the entire proceeds to their own uses, and are now before this court claiming that what they have accomplished was lawful, and that the millions which they have taken from the orange growers was properly taken by the means described in the evidence.

The Commission says:

> "It is strongly significant also that in respect alone of this freight (the only traffic shown to be covered by the tonnage division arrangement and none other in the whole range of varied commodities and classes of traffic) do the defendants assume to dictate its movement beyond their own roads, *as between the established continuous lines.* It seems an indefensible proposition that a vital right of the shipper shall be sacrified, and violation of one important provision of the statute shall be fostered in order to induce obedience to another. The use of the shipper's property in this manner and to this end is as if it were seized upon, marshaled and maneuvered by the initial carriers for distribution among connections for their own advantage and to satisfy such connections, and thereby hold up rates by unlawful methods, regardless of the rights of the owners of the property handled and used for these purposes. The carrier is a bailee of the property which is in its custody for the purpose of transportation only, and it cannot lawfully wrest from the owner that general control and direction of the same which is deemed by him needful for the prudent protection of his own property and interests and not inconsistent with the due performance of the service undertaken by the carrier.
>
> Moreover, in respect of this traffic shippers are required to release the carriers from liability for damage by the weather, decay, shortage and delay. They are also required to prepay or guarantee freight charges to destination. So that the carriers

> are relieved of the care and risk on his property as to their customary lien on freight for the collection of their charges which, on shipments of this traffic, must be paid whether the goods bring a sufficient amount for that purpose or not. Neither does the initial carrier assume liability for damage resulting from the negligence of any connecting line." [R 75.]

But for the bringing of this suit the "Routing Rule" would have been extended to all freight and all roads in the United States. There would have been one vast monopoly in transportation. [R. ev. Morton 127.]

It is Immaterial that Some of the Facts Found by Commission are Placed Under Head of Conclusions.

It is claimed by counsel for appellants that some of the facts found by the Interstate Commerce Commission are placed in its report under the head "Conclusions".

All the essential and material findings of fact by the Commission are placed under the heading "Facts" in the report.

The contention of appellants' counsel is that under section 14 of the Commerce Act no fact can be considered by the court which is placed under the head of "Conclusions".

This is a technical objection and would indeed be a narrow construction to place upon a statute intended to protect the whole public in their rights over and upon the interstate commerce roads and under a constitutional power of Congress, of an ample nature, to regulate commerce, between and among the states and with foreign nations.

It is submitted that the Commerce Act will not bear any such strict construction as is attempted to be placed upon it, by counsel for defendants.

Section 14 of the Interstate Commerce Act provides,

> "that whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing, in respect thereto which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation, as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found."

This provision of the Commerce Act is quite different from statutes where the trial court is required to make findings of facts upon which the *conclusions of law* are based.

The Commission is to make findings of fact upon which its *conclusions* are based. These conclusions are not necessarily to be *conclusions of law*, but naturally may be conclusions of fact or statements of ultimate facts deduced from the evidence. Such reasonable construction of the act is supported by the provisions of section 16 of the Commerce Act, which provides that in cases where the Commission applies to the Circuit Court to enforce its orders, that

> "said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises."

The proceedings for the supervision and enforcement of the Commerce Act are thus intended to be liberal, and without the technical rules and proceedings appertaining to ordinary actions, but with a view of doing justice as the law provides.

The Commission does not in stating its "conclusions" that the routing rule or practice is discriminative, state or infer that such conclusions are *conclusions of law,* but from their context it is obvious that they are in part conclusions of fact drawn from the more detailed statements of the evidence preceding.

The principle is well settled upon general authority that even where findings of fact and conclusions of law are required to be made by a trial court that the circumstance that findings of fact are inserted under the head of "conclusions of law", does not in any wise affect their validity or prevent all of such facts so found from being available to support the judgment.

O'Reilly v. Campbell, 116 U. S. 418, 420;

Hayne on New Trials, 242;

McCarthy v. Brown, 113 Cal. 15, 16.

In O'Reilly v. Campbell, 116 U. S. 418, 420, which was a case brought on appeal from the Supreme Court of Utah Territory, the court said:

> "As to the findings, it is true they are not drawn with skill or precision; they are loose and somewhat confused. Facts and conclusions of law are sometimes mingled together contrary to the direction of the statute, creating the impression that the findings were prepared under the pressure of other duties, and did not receive the necessary care and attention. But findings are not to be construed with the strictness of special pleadings. It is sufficient if from them all, taken together with pleadings, we can see

> enough upon a fair construction to justify the judgment of the court, notwithstanding their want of precision and the occasional intermixture of matters of fact and conclusions of law. Defects of form should be called to the attention of the trial court by the objecting party, and the requisite correction of the findings would seldom be denied."

In Morgan v. Eggers, 127 U. S. 66, which was a case on error, to the Supreme Court of Indiana, the court said:

> "The order of January 20, 1883, embraces both a finding and judgment. But they are not for that reason nullities. (O'Reilly v. Campbell, 116 U. S. 418, 420.) * * * As there was no special finding of facts bearing upon the question of title, we must assume that the evidence authorized the finding as to the particular premises awarded to the plaintiffs."

POINTS AND AUTHORITIES.

FIRST POINT.

The Circuit Court had jurisdiction of the parties defendant and of the cause.

(A) Right to object waived by general appearance.

The appellants make the following assignment of error:

"Said Circuit Court was without jurisdiction as constituted and acting herein, in and during the proceedings in this case to hear and determine said cause." [R. 1083.]

Also as follows:

"The court erred in overruling the demurrer of these

defendants to the petition and complaint herein of the above named complainant." [R. 1084.]

The defendants, Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railway Company and Southern California Railway Company, appeared generally in the cause and in the Circuit Court and filed a general demurrer for want of equity, and also for want of proper parties defendant to the bill. [R. 87, 88.]

The defendant, Southern Pacific Company, also entered a general appearance in the Circuit Court and in the cause, and also filed a general demurrer to the bill of complaint for want of equity. [R. 89, 90.]

None of the defendants appeared specially to raise any question as to the jurisdiction of the Circuit Court, *but all of them appeared generally*, and if by the assignments of error now made the defendants or any of them contend that the court was without jurisdiction of the defendants by reason of the places of residence of the defendants, or either of them, we submit that the right to object to the jurisdiction has been waived by such voluntary appearance.

The defendants also appearing generally, filed their answers to the merits without objecting to the jurisdiction. [R. 91, 101.]

Having so appeared and demurred and answered generally, we submit that defendants have *waived* all right to object to the jurisdiction of the persons of the defendants or to the forum, and that such objections cannot be made now.

St. Louis Railway v. MacBride, 141 U. S. 127;

Texas & Pacific Railway v. Cox, 145 U. S. 593, 603;

Central Trust Co. v. McGeorge, 151 U. S. 129;
Interior Construction Co. v. Gibney, 160 U. S. 217.

(B) Bill of complaint does not show others to be necessary or indispensable parties.

The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Railway Company and Southern California Railway Company, as before stated, demurred to the bill upon the ground that the bill showed that there were other necessary parties defendant to the bill, who were not joined. [R. 87, 88.]

The Southern Pacific Company did not file a demurrer upon the ground of want of necessary parties defendant. [R. 89, 90.]

None of the defendants filed any plea or answer to the jurisdiction on account of want of necessary parties defendant.

As we understand the contentions of counsel for the Atchison Railroad, the point is attempted to be made that the routing rule and practice of the defendants comprising the Southern Pacific system and the Atchison system, which the said defendants were required by the order of the Commission to cease and desist from enforcing, was a regulation which was not only a rule and practice agreed to and enforced *by defendants* but was carried into the joint tariff, filed by the said defendants and numerous eastern and *Canadian* lines of railway with the Interstate Commerce Commission, and that the bill of complaint with the annexed exhibits, including the report of the Interstate Commerce Commission, shows that these numerous eastern and Canadian lines of rail-

way were parties to that joint tariff, and that consequently, they are necessary parties defendant to this cause.

We submit in answer to this contention, that there is nothing in or about the bill of complaint which shows that any other railroad company was complained of before the Commission as enforcing the routing rule, or practice, and that the bill does not show that any other railroad is now enforcing or ever has enforced, the said routing rule or practice, but on the contrary, does show that this routing rule, or practice, was enforced at the instigation of and solely by the Southern Pacific system and the Atchison system, parties to the present cause.

(C) Objection to want of other parties waived by failure to plead their names and show necessity of joining.

The order of the Commission required these two systems of railroad, they being competing lines, to cease and desist from that rule, or practice, and the order of the Commission was not directed against any other person, or corporation.

The report of the Interstate Commerce Commission, annexed to the bill, contains the following statement:

> "At the terminals mentioned (defendants' terminals) and at numerous junction points upon their lines, the defendants' systems connect with other carriers and form through connecting routes for the transportation of oranges and lemons and other citrus fruits from all shipping points in Southern California to practically all consuming markets in the United States. * * *
>
> "The defendant carriers have in effect a common

> tariff on citrus fruits from Southern California shipping points to the Missouri river and points east thereof. This joint tariff fixes a single or blanket rate of $1.25 per one hundred pounds to practically all points on and east of the Missouri river and names 183 participating roads which are classified in the tariff, as Western Roads, New England Roads and roads in trunk line and central freight association territories. 31 carriers in southeastern common point territory are also named with the following note: 'For application of rates to southeastern common points, see page 6 of east bound tariff No. 3-6." [R. 58.]

This finding of the Commission shows that there are in all, besides the parties defendant to this cause, being the Southern Pacific and Atchison systems, 214 railroad companies connecting directly or indirectly with the systems of the defendants, which are parties to the so-called joint tariff.

The bill of complaint does not contain a list of these eastern lines, parties to such joint tariff with the names of the railroads participating therein. [R. 8.]

There was nothing appearing upon the face of the bill to show that these eastern and Canadian railroads were indispensable parties to the injunction sought against the Atchison and Southern Pacific systems, nor did it appear that they were necessary parties within the ordinary meaning of that term, nor, even, that they were proper parties, for the reason that no relief was sought as against them, nor were they directing or controlling the routing of citrus fruits contrary to the direction of shippers.

We understand that the practice is well settled, that unless such non-joinder of indispensable parties plainly

appears upon the face of the bill, that such defect can only be raised by plea or answer, *pointing out and naming the persons who ought to be made parties and giving the reasons therefor.*

Carey v. Brown, 92 U. S. 171, 173;

Florence Machine Co. v. Singer, 8 Blatch. 113, Fed. Cases No. 4881;

Sheffield v. Newman, 77 Fed. 787-791 (C. C. A.)

Equity Rules 52, 53.

(D) Discretion of court to dispense with parties out of jurisdiction.

Even if these 214 eastern railroads would ordinarily be necessary parties defendant, which, however, is not conceded, there was discretion in the court below to dispense with them, they not being within the jurisdiction.

Upon the demurrers to the bill for want of jurisdiction, the necessity of such parties must appear upon the face of the bill.

It does not appear upon the face of the bill that any of those 214 railroad companies are residents of this judicial district, or that either of them has its principal place of business in this district, but being connecting lines of these defendants the inference is that they are situated in other states or territories.

It does not appear on the face of the bill or by the testimony that either of said connecting railroads has violated *within this district* the order of the Interstate Commerce Commission. [See first clause, Sec. 16 Interstate Commerce Act.]

It therefore appears that all of those railroads were beyond the jurisdiction of the Circuit Court.

The trans-continental citrus tariff referred to in the report of the Commission, and which is in evidence in this case [R. 456-517], contains the names of the railroads, and describes the territory within which said railroads are situated.

This tariff, at pages 516, 517, includes various points and places in *eastern Canada.*

Other parts of this tariff relate to various states within the United States situated south of Canada and west of the Atlantic Ocean.

The tariff at page 470 of the Record, names the "Grand Trunk Railway" as one of the parties, and at page 471 names the "Canadian Pacific Railway", and the "Clyde Steamship Line".

In other words, the so-called joint tariff names numerous railroads in Canada and foreign steamship lines and territory in Canada and in the eastern states as being embraced within the so-called joint tariff.

The contention of appellants' counsel is that the Interstate Commerce Commission could not investigate nor the Circuit Court entertain a suit to enjoin the defendants in this cause from committing discrimination, and from violating the law without performing the impossible feat of bringing before such tribunals corporations and railroad companies organized under the laws of foreign nations and doing business in Canada, and being wholly outside of the jurisdiction of the United States.

To state the appellants' contention is to at once demonstrate its absurdity.

It is provided by Equity Rule 47, which is based upon U. S. Revised Statute, section 737, as follows:

> "In all cases where it shall appear to the court that persons who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, * * * the court may in their discretion proceed in the cause without making such persons parties, and in such cases the decree shall be without prejudice to the rights of the absent parties."

The Circuit Court did in its discretion proceed in the cause without making such persons parties, as it had a right to do.

Inbusch v. Farwell, 1 Black 566, 571, 573;
Payne v. Hook, 7 Wall. 425, 431;
Fisher v. Shropshire, 147 U. S. 133, 145;
Story's Eq. Pl., Sec. 87.

(E) Where parties are numerous the court may dispense with them where represented.

Counsel for appellants contend that besides the Southern Pacific system and the Atchison system, including its constituent corporations, that these eastern and Canadian 214 railroad corporations ought to have been made parties to this suit.

The statement of the proposition and the number demonstrates its impracticability. The Circuit Court could not within the span of an ordinary life, have disposed of the motions, demurrers, answers, depositions and other usual proceedings of 214 railroad corporations in a single suit. Their very numerousness would operate to deny justice, especially in a matter pertaining to transportation and of the rights of the public connected therewith.

Railroad corporations act decisively and quickly through their executive officers in all matters pertaining to transportation, both in matters where they violate the law, as well as in lawful things, and if the United States government cannot secure an enforcement of the law against one group of corporations, without the inevitable delays, which would result from bringing in all the railroads in the country, and also foreign carriers, it would, indeed, be impotent.

Equity Rule No. 48 provides, as follows:

> "Where the parties on either side are very numerous, and cannot without manifest inconvenience and oppressive delays in the suit be all brought before it, the court in its discretion may dispense with making all of them parties and may proceed in the suit having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it, but in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties."

The Circuit Court in the case below did *in its discretion* proceed in the suit without bringing in all of the parties to the so-called joint tariff.

The Southern Pacific Company controlling and operating numerous lines, embraced in that system, and the Atchison, Topeka & Santa Fe Railroad Company, the Southern California Railway Company and the Santa Fe Pacific Railroad Company, were all parties to the so-called joint tariff, or Transcontinental Freight Bureau, and the defendants originated, developed and carried into effect the scheme in and by which the Southern Pacific system and the Atchison system were to control the routing of citrus fruit in order to work a pool and division

of business and freights, and the court below in its discretion doubtless considered that these four corporations embracing the two western systems, sufficiently represented the other members of the joint tariff, or freight association. For this reason alone it was proper to dispense with the eastern and Canadian railroad lines.

Rules in Equity No. 48;
Story's Eq. Pl., Sections 95, 97, 118;
U. S. v. Southern Pacific Railroad, 117 Fed. 544, 133 Fed. 651;
Davis v. Gray, 16 Wall. 203, 232.

The court will also observe by the thorough answers prepared in the cases and testimony taken on behalf of the defendants, that they fully contested every issue, not only for themselves, but for the benefit of all members of the freight association of which they were members.

(F) Wrong doer cannot defend on ground that another is not prosecuted.

The acts of the defendants in violating and refusing to obey the order of the Interstate Commerce Commission and in persisting in the routing rule or practice, in the view of the Circuit Court and in the opinion of the Commission, were illegal and tortious and violative of the Interstate Commerce Act.

There is a well settled principle which we invoke, that where it is sought to enjoin parties against the commission of a *tortious* act, or to recover damages for a *tortious* act, that it is no defense to say that other parties in-

terested with them, or joined in such wrongful acts, are not joined as parties defendant.

Cooley on Torts, 2d ed. p. 153;

Texas Pac. Rd. v. I. C. C., 162 U. S. 197, 205;

affirming I. C. C. v. Texas Pac. Rd., 52 Fed. 188;

Hawes on Parties to Actions, Section 28a;

Vol. 15, Enc. P. & P. 557;

Florence Sewing Machine Co. v. Grover, 110 Mass 1, 12;

Wilkinson v. Parry, 4 Russells, Rep. Eng. Ch. 272, 274;

Attorney General v. Wilson, Craig & Phillips, Eng. Ch. Rep. 1, 28;

Smith v. Atchison Rd., 64 Fed. 1;

Peoples Telephone Co. v. East Tennessee Telephone Co., 103 Fed. 212 (C. C. A. 6th Circuit);

Delaware Railway Co. v. Frank, 110 Fed. 689;

St. Louis Railway v. Coolridge, 83 Southwestern 333 (Ga.);

Gulf Railroad v. Leatherwood, 69 Southwestern 119 (Tex.).

SECOND POINT.

The rule and practice of defendants reserving absolute control of routing as found by the commission, is, as matter of law, in violation of section six of the commerce act, providing for joint tariffs over connecting railroads showing "continuous lines of routes" and prohibiting a greater charge than tariff rates for shipments over such lines.

The defendants and their connecting carriers filed their joint tariff for through rates and fixed the tariff on citrus fruit at $1.25 per hundred, claiming the right in such tariff to arbitrarily close any line of route to any shipper, or withdraw any line one day and restore it the next, at the absolute dictation of the initial carrier, and in all cases where a shipper insisted upon directing the route the carriers applied local rates greatly exceeding the joint tariff rate to such shipments.

It is clearly provided in section 6 of the Commerce Act, what shall be shown upon joint tariffs and among other things it is provided as follows:

> "And in cases where passengers and freight pass over continuous lines or routes, operated by more than one common carrier, and the several common carriers operating such lines or routes, establish joint tariffs of rates, or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also in like manner be filed with said Commission."

It is also provided in section 6 as follows:

> "No advance shall be made in joint rates, fares and charges, shown upon joint tariffs, except after ten days notice to the Commission, which shall plainly state the changes proposed to be made in the

schedule then in force, and the time when the increased rates, fares or charges will go into effect."

It is further provided by the same section as follows:

"It shall be unlawful for any common carrier party to any joint tariff to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of persons or property or for any services in connection therewith, between any points as to which a joint rate, fare or charge is named thereon, than is specified in the schedule filed with the Commission in force at the time."

It is plainly the theory and intent of the Commerce Act that when connecting carriers file joint tariffs they shall plainly designate *the lines of route* over which such tariffs apply, and that when the tariff rate is fixed and filed with the Commission, that *such lines of route* shown in the joint tariffs shall be open to public use *at the rates specified* and the act so provides in plain terms.

The purpose of these provisions is to prevent railways from opening routes and closing them and to prevent the carriers from changing the tariffs shown upon such routes, without due notice to the public and to the Commission, which body exercises a control over the matter of the reasonableness of the rates.

Now in the present case the Atchison system and the Southern Pacific system filed what they called their joint tariff before mentioned, showing the connecting lines to the east beyond their terminals.

On the Atchison road east of Chicago there were numerous lines to eastern states and the Atlantic seaboard, and likewise there were numerous lines of road connecting with the Southern Pacific system.

These lines of railroad were all designated and described in the tariff, and the tariff rate over all of them was fixed at $1.25 a hundred for citrus fruit, from Southern California to all points over any of those lines of railroad to points east of the Missouri river.

When, therefore, the defendant railroads designated these through lines to the east fixed the tariff rate at $1.25, a refusal on their part to accept freight over any of those lines at the specified rate was an open and wilful violation of the provisions of the commerce act above quoted.

It is well established that when connecting carriers enter into joint tariffs for freight over continuous lines, that such lines cannot be withdrawn from the public and from the control of the Commerce Commission. In Cincinnati and Texas Railway v. Interstate Commerce Commission, 162 U. S. 184, 192, the identical principal contended for by the defendants here, was set up by the Georgia Railroad Company, and the court said:

> "But when the Georgia Railroad Company enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but made by an arrangement for the continuous carriage or shipment from one state to another, and thus becomes amenable to the Federal act in respect to such interstate commerce. * * *
>
> "Having elected to enter into the carriage of interstate freights, and thus subjected itself to the control of the Commission, it would not be competent for the company to limit that control, in respect to foreign traffic, to certain points on its road and exclude other points."

In Minneapolis Railroad v. Minnesota, 186 U. S. 263, 264, the question presented was as to whether certain railroads in the state of Minnesota which had filed a joint tariff for commerce within the state, under the act of legislature of Minnesota, could voluntarily withdraw any line laid down in such joint tariff, and the court applying the principle declared in reference to joint rates for Interstate Commerce, under the act of Congress, said:

> "We are bound to recognize the fact that modern commerce is largely carried on over railways owned and operated by different companies; that Congress in passing the Interstate Commerce Act assumed the power to determine the reasonableness of joint tariffs as applied to connecting lines between the several states, Cincinnati &c. R. R. Co. v. Interstate Com. Com., 162 U. S. 184, and that, if the power of the state commission were limited to the tariffs of a single road, it would be wholly inefficacious in a large number, if not in a majority, of cases—in fact, that the whole purpose of the act might be defeated. The necessities of this case do not require us to determine whether connecting roads may be compelled to enter into contracts as between themselves and establish joint rates, but so far as applied to contracts already in existence we have no doubt of the power of the state to supervise and regulate them. Such a contract for a joint rate having been in existence when the order of the Commission was made, we do not think it was affected by the subsequent withdrawal of the Minneapolis and St. Louis Company."

The combined local rates over the connecting lines of railroad embraced in the joint tariff, greatly exceed the through rate. [R. 310.]

This is admitted in the answers. [R. 96, 102.]

It has been the practice of the defendants under their routing rule to charge local rates for shipping freight over the lines and to points named in the joint tariff wherever the shipper insisted on the right of routing or of selecting his own routes mentioned in such joint tariff. [R. 310.]

The defendant carriers refused to obey the order of the Commission to allow shippers to select any of the routes named in the joint tariff and applied the local rates as stated.

It is very plain that the denial of the *through routes* laid down in the joint tariff, at the whim or caprice of the initial carrier, or under an arrangement for division of business, is in effect an arbitrary withdrawal of such lines of route from the operations of the joint tariff, in violation of the provisions of the Commerce Act, as clearly stated in the decisions above mentioned.

It is equally clear that the refusal to transport freight *over the lines of route laid down in the joint tariff and at the rates therein prescribed* and the charge made over such routes and between the points named, in such joint tariff at the local rates, *far exceeding the joint rate,* is in violation of the seventh clause of section six of the Commerce Act.

THIRD POINT.

Routing rule violates Interstate Commerce Act and Sherman Anti-Trust Act forbidding pools and combinations in restraint of commerce.

The routing rule or practice devised and carried into effect by the Atchison Company and the Southern Pacific Company, by which they assume and exercise the arbitrary authority of routing freight over connecting lines to the exclusion of lines established in the joint tariff for the purpose of destroying competition and working a freight pool and division of freights between competing lines and actually accomplishing that result, is in violation of section 5 of the Interstate Commerce Act, and also of section 1 of the Sherman Anti-Trust Act.

Section 5 of the Interstate Commerce Act provides as follows:

> "Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

Section 1 of the act to protect trade and commerce against unlawful restraints and monopolies provides as follows:

> "Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in re-

straint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The provisions of section 5 of the Interstate Commerce Act and of section 7 of the Sherman Anti-Trust Act both relate to the regulation of interstate commerce a subject within the plenary power of congress under the constitution.

They both prohibit combinations and agreements between individuals or corporations which have for their object the stifling of competition and obstruction of interstate commerce by simultaneous action between competing lines.

Section 5 of the Interstate Commerce Act is expressly levelled against railroad corporations engaged in interstate commerce, while section 7 of the Sherman Anti-Trust Act includes all persons and it has been held to include railways engaged in interstate commerce.

United States v. Trans-Missouri Freight Association, 166 U. S. 290;
United States v. Joint Traffic Association, 171 U. S. 505, 578;
Addyston Pipe Company v. United States, 175 U. S. 211, 248;
Montague v. Lowry, 193 U. S. 38;
Swift & Company v. United States, 106 U. S. 375;
Interstate Commerce Commission v. Baird, 194 U. S. 25, 47.

These acts being *in pari materia* by a settled rule of construction are to be considered together and read as a single act, the latter being amendatory of the first.

Cheow Heong v. United States, 112 U. S. 536;
Chicago Railroad v. United States, 127 U. S. 406;
District of Columbia v. Hutton, 143 U. S. 18.

Routing Rule Violates Section 5 of Commerce Act.

However, if no effect can be given to the provisions of section 7 of the Sherman Anti-Trust Act in connection with the provisions of section 5 of the Commerce Act, they both relating to the suppression of combinations to destroy competition, it appears that the provisions of section 5 of the Interstate Commerce Act prohibit this pool and division of freight.

Section 5 of the Commerce Act plainly, and in the clearest English, appears to be directed against two things: (1) an agreement or combination for the pooling of freights of different and competing railroads; (2) forbidding an agreement or combination to divide between competing lines the net proceeds of the earnings of such railroads.

It is the agreement for the consummation of these things which the law prohibits and not the outward form by which they are done.

It is not to be supposed that the laws will be openly and notoriously violated, but, on the contrary, such violation is usually attempted to be accomplished by indirection.

Whatever the method employed, if the defendant railways—they being different and competing lines—have

actually accomplished or have agreed or combined to accomplish by the routing rule a pool of freights or a division of the aggregate or net proceeds of the earnings, they clearly have violated the statute.

The findings of the Commission and the testimony taken in the Circuit Court, including the testimony of officers of the defendants, show that by means of controlling the routing of freight in citrus fruit, these two systems—they being competing lines—have actually worked out not only a pool, *but also have accomplished a division of the earnings by means of a physicial division of the shipments of freight.*

The reasoning of Judge Wellborn, of the Circuit Court, is so clear and logical that the following excerpts are made from his opinion:

> "While it is unquestionably true, as contended by the defendants, that joint tariffs over continuous lines are purely matters of voluntary arrangement between the carriers themselves, about which they may specially contract, yet this power of contracting, of course, is subject to all the prohibitions of the Commerce Act, as well those against pooling as those against unjust charges and discriminations. Section 5 of the Commerce Act, above quoted, makes it unlawful for the common carriers therein mentioned to enter into any contract, agreement, or combination among themselves—first, for the pooling of freights of different and competing railroads; second, to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof. The analysis of said section contended for by the Atchison, Topeka & Santa Fe Railway Company is inadmissible. According to that contention, the second prohibition of said section is not against a contract to divide earnings, but

against the actual division of earnings. Such a construction is grammatically impossible. The predicate of the clause 'to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof,' is all of the section down to and including the word 'carriers' in the fourth line. To stop short of the word 'carriers', and attempt a connection with the words 'to divide', etc., renders the clause incomplete and meaningless. The section, to properly express the prohibition, or, indeed, to have any meaning whatever, must be read as follows:

" 'That it shall be unlawful for any common carrier or carriers * * * to enter into any contract, agreement or combination with any other common carrier or carriers to divide between them,' etc.

"Unless the two clauses are thus connected, the relative 'them' in the latter is without an intelligible antecedent. * * * *

"Another objection to the defendant's analysis is that it loses sight entirely of the obvious purpose of the section, namely the safe-guarding of competition." * * * *

(United States v. Freight Association, 166 U. S. 290.)

"The meaning which said defendant attaches to the word 'freights' is in my opinion also wrong * * * * The word 'freights' was not intended to include passenger traffc." * * *

"Again, passenger traffic is included in the prohibition against the conventional division of earnings; and, if the word 'freights' were given the meaning defendant claims for it, then the first prohibition of the section, the one against pooling freights, would be entirely useless, since its purpose would be fully accomplished by the prohibition against division of earnings. On the other hand, the pooling of freights, in the sense of distributing the commodities to be transported, among the various carriers who are to perform the service, is not reached by a prohibition against the division of earnings. * * *

"It should be borne in mind that railroads may

pool their freights—that is, the commodities they carry—in two ways: First, by distributing the commodities between themselves for carriage; second, by dividing among themselves their aggregate earnings on the commodities carried. Obviously a prohibition against division of earnings does not include the first class of freight pools, and this explains why section 5 of the Commerce Law (24 Stat. 380.. U. S. Comp. St. 1901, p. 3156), although adopting some of the features of section 2 of the original Reagan bill, as shown in defendants' brief omits the words 'or to pool the freights', which were contained in said section 2, and for the words 'by dividing', also contained in said section 2, substitutes the words 'or to divide', thus showing that it is the purpose of the commerce law to prohibit, not only earnings pools, but also traffic pools. * * * *

"The Century Dictionary, however, defines the word 'pool' thus:

" 'A combination intended by concert of action to make or control changes in market rates.'

"This general definition the same authority specially illustrates thus:

" '(b) A combination of the interests of several otherwise competing parties, such as rival transportation lines, in which all take common ground as regards the public, and distribute the profits of the business among themselves equally, or according to special agreement. In this sense pooling is a system of reconciling conflicting interests, and of obviating ruinous competition, by which the several competing parties or companies throw their revenue into one common fund, which is then divided or redistributed among the members of the pool on a basis of percentages or proportions previously agreed upon or determined by arbitration.'

"For judicial approval of this lexicographical exposition, see *In re* Pooling Freights, 115 Fed. 558.

"Obviously the general definition above quoted is broader than the special illustration, and I can conceive of no particular wherein the contract for routing by the initial carrier falls short of said definition.

Said contract shows upon its face a combination intended by concert of action to make and control changes in market rates, and, besides, defendants' own witnesses testify to such intention in unmistakable language. * * *

"Not only, however, is the routing rule a pooling arrangement within the letter of said section, but said rule is against the spirit of the Commerce Act. That act prohibits only pools of *competing railroads*, and the sole object of suppressing such pools was to protect the competing relation, and any and every arrangement or device intended to destroy, and which does destroy, that relation, whether expressly named in the act or not, contravenes its policy. Since defendants' plan to maintain their rates through the operation of the routing rule necessarily involved the destruction of competition, it is idle to say that that result was intended by them. The sole immediate aim of the routing rule was to put the shippers of citrus fruit in a position where their patronage could not possibly be competed for by defendants' eastern connections, and Mr. Morton himself explains the matter briefly, but with great clearness, in the following extracts already quoted from his testimony: [R. 1035-1039.]

132 Fed. 837, 838, 839, 840, 841.

Judge Speer in Tift v. Southern Railway Company, 138 Fed. 753, 761, said:

"This combination or concert of action on the part of the respondent railroads is plainly violative of that provision of the interstate commerce law which forbids pooling. This was enacted, among other things, for the purpose of securing competition. Pooling may be as well effected by a concert in fixing in advance the rates which in the aggregate would accumulate the earnings of naturally competing lines, as by depositing all of such earnings to a common account and distributing them afterwards. That such an association and concert of action between agents of naturally competing lines

is destructive of competition is equally unanswerable."

It is obvious that the purpose of section 5 of the Interstate Commerce Act was to prohibit combinations having for their object the stifling of competition, the restraint of commerce and artificial increase of rates by concert of action between competing lines.

Congress, therefore, has prohibited the "pooling of freights" and a "division of earnings" by competing railroads whatever the form or device may be to accomplish these results.

If a narrow and technical interpretation of these comprehensive laws were adopted, it would not be difficult for violators of the law to devise other modes of dividing earnings, which may not have been adopted or proposed, thereby greatly enlarging their powers and restricting the rights of the public.

Interstate Commerce Acts should be Liberally Construed to Protect Public.

The power of railways to operate interstate railroads and to fix schedules of rates is in pursuance of public franchises granted by and eminating from the United States.

Those franchises and powers eminate from the nation and cannot be exercised at all without authority from Congress, nor can they be burdened by the states.

California v. Pacific Railroad, 127 U. S. 1, 39;
Luxton v. North River Bridge Co., 153 U. S. 525, 533;
Illinois Rd. v. Illinois, 163 U. S. 142;
Hanley v. Kansas, 187 U. S. 617, 619.

In California v. Pacific Railroad, *supra*, the court said:

> "No private person can establish a public highway or a public ferry or railroad or change tolls for the use of the same without authority from the legislature direct or derived. These are franchises."

The Interstate Commerce Acts were passed to regulate the rights of the public and to prevent public wrongs by common carriers engaged in interstate commerce. To construe these acts strictly would operate to curtail and to deny the public rights and to enlarge by implication the corporate franchises and powers of the railways.

We think it is a settled rule of construction that statutes intended to prevent fraud and wrong, although containing penal provisions, are to be construed liberally in favor of the public.

Taylor v. United States, 3 How. 197, 210;
Smythe v. Fiske, 23 Wall. 374, 380;
United States v. Stowell, 133 U. S. 1, 12.

It is also well settled that franchises, privileges and powers, claimed under authority of the state or nation, are to be ~~strictly~~ construed in favor of the public and against the grantee, and that nothing will be deemed to have been passed or taken against the public upon any implication, and that all doubts and ambiguities are to be construed favorably to the government.

Dubuque & Pacific Railroad v. Litchfield, 23 How 83, 88;
Leavenworth, Lawrence &c., Railroad v. United States, 92 U. S. 733, 740;
Coosaw Mining Co. v. South Carolina, 144 U. S. 550, 562;
Holyoke Co. v. Lyman, 15 Wall. 500, 512;
Slidell v. Grandjean, 111 U. S. 412, 437;
Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 696.

Hence it follows that the interpretation of these Interstate Commerce Statutes acts in the nature of a balance. Wherever a strict interpretation is given which operates to deny to the public rights or protection in the matter of rates or of transportation over interstate commerce roads, or to deny to the Interstate Commerce Commission, or other public authority, the regulation of such matters, that very construction or interpretation operates to enlarge *by implication* the powers and franchises of the interstate commerce railways.

Whatever is taken away from the one side must necessarily be given to the other; and we therefore submit that under the settled rules of construction of such acts they should be construed liberally to protect the public interests and the public authority, and in cases of ambiguity or doubt to restrict the franchises and powers claimed against the government.

FOURTH POINT.

Routing rule obstructs commerce and is discriminative.

The routing rule or practice in its operations and effect is discriminative as shown by the findings of the commission and evidence taken before the Commission and in the Circuit Court heretofore reviewed in the following respects:

(1) In denying shippers the right of transportation over through routes designated and laid down in the joint tariffs filed by the defendants with the Interstate Commerce Commission at the through routes established in such joint tariffs; (2) in refusing to shippers control

over their shipments; (3) in interfering with diversions and sale of fruit, the practice of diverting being one of universal custom; (4) in preventing shippers from having knowledge of routes; (5) in wresting control of the shipments from the owner, which he needs for prudent protection of his own property; (6) in denying shippers the shortest and best routes; (7) in resulting in delays in transit; (8) in resulting in shipments over bad lines affected by weather; (9) and in destroying competition.

In the above respects the routing rule or practice complained of subjects shippers of citrus fruit and the locality of Southern California and the citrus fruit traffic to undue and unreasonable prejudice and disadvantage in violation of the first clause of section 3 of the Interstate Commerce Act.

That provision is as follows:

> "Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The Interstate Commerce Commission, after stating all the facts in detail, found in its conclusions as follows:

> "Our conclusion is that the practice of the defendant carriers in denying to the shippers the use of their transportation facilities by the established routes is in violation of the statute, and, in its application by the defendants to the traffic in quesion, subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvant-

age, and gives to the carriers an undue and unreasonable preference and advantage." [R. 77.]

The bill of complaint alleged that the said routing rule r practice is in violation of the act to regulate commerce and is discriminative in the following language:

> "And complainant charges that the said rule of the defendants and practice thereunder, which they are required by said order, Exhibit "H" hereto, to cease and desist from enforcing and maintaining, are in violation of the Act to Regulate Commerce, in that, among other things, said rule and practice subject shippers of oranges, lemons, and other citrus fruits, from points in Southern California to points on and east of Missouri river and to other destinations, to an undue or unreasonable prejudice or disadvantage, and also in that it subjects the traffic in oranges, lemons and other citrus fruits, between said points, to an undue or unreasonable prejudice or disadvantage and gives to said defendants an undue or unreasonable preference or advantage."
>
> [R. 11, 12.]

The Circuit Court expressly found that all of the allegations of the bill of complaint were true. [R. 112.]

The testimony heretofore reviewed, which was taken in the Circuit Court, overwhelmingly established that this allegation of the bill of complaint and finding of the Commission was true.

It is well settled that where two lower courts have passed upon and concurred in the facts upon which the decree is based, the Supreme Court, upon appeal, will consider those facts as established.

Dravo v. Fabel, 132 U. S. 487;
Stuart v. Hayden, 169 U. S. 1, and
Shappirio v. Goldberg, 192 U. S. 232, 240.

This court ought therefore to consider the facts found by the Commission, and reaffirmed by the Circuit Court, to be definitely established.

FIFTH POINT.

Bill of complaint shows discrimination by defendant carriers forbidden by supplementary act of February 19, 1903. This suit is maintainable independently of any report by commission.

The bill of complaint contains the following averment:

> "And complainant charges that the said rule of the defendants and practice thereunder, which they are required by said order, exhibit H hereto, to cease and desist from enforcing and maintaining, are in violation of the act to regulate commerce, in that, among other things, said rule and practice subject shippers of oranges, lemons, and other citrus fruits from points in Southern California to points on and east of the Missouri river, and to other destinations, to an undue or unreasonable prejudice or disadvantage, and, also, in that it subjects the traffic in oranges, lemons, and other citrus fruits between said points to an undue or unreasonable prejudice or disadvantage, and gives the said defendants an undue or unreasonable preference or advantage." [R. 11, 12.]

The Circuit Court found this allegation to be true. [R. 112.]

The act of Congress "to further regulate commerce with foreign nations and among the states", approved February 19, 1903, provides, by section 3, as follows:

> "That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier * * * is committing any

> discriminations forbidden by law, a petition may be presented alleging such facts to the Circuit Court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or state, it may be dealt with, inquired of, tried, and determined in either such judicial district or state, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity."

By section 4 of the act it is provided as to suits then pending that "such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law *and as modified by the provisions of this act.*"

In Missouri Pacific Railway v. United States, 189 U. S., 274, 284, the court held that the provisions of the above act of 1903 were applicable to cases pending at the time of its passage, and that the effect of such legislation was not only to authorize the Interstate Commerce Commission to commence suits to enforce the provisions of the Interstate Commerce Act as to any discrimination forbidden by law without having made any findings of fact, or report, but also that the provisions of the said act of 1903 were intended to and did include pending litigations and suits which had been commenced without any findings of fact or report of the Commission.

The present case was pending when the act of February 19, 1903, was passed, but the answers of the defendants were not filed until after the passage of that act [R. 101, 108], and all of the testimony was taken, ar-

guments had, and final decree entered after the passage of that act.

We submit that the allegations of the bill of complaint above set forth, charging undue and unreasonable prejudice and disadvantage as to shippers of citrus fruit, and as to the orange traffic, as to which averment no special demurrer was filed, but upon which issue was joined by the answers [R. 92, 101], and the testimony heretofore reviewed supporting such averments of the bill, present a case within the purview of the act of 1903 independent of any findings of fact or report of the Commission.

The decree of the Circuit Court should be affirmed.

Respectfully submitted,

JOSEPH H. CALL,

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For Appellee.

SYLLABUS.

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ARGUMENT FOR THE INTERSTATE COMMERCE COMMISSION.

I.

STATEMENT OF CASE.

Defendants, the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company, are the initial members of the lines which transport oranges, lemons, and other citrus fruit from Los Angeles, Cal., and other points of production in Southern California, to markets outside that State.

The Southern Pacific Company has two lines, one extending from Los Angeles *via* El Paso, Tex., to New Orleans, La., and the other from Los Angeles *via* Sacramento, Cal., to Ogden, Utah.

The Atchison, Topeka and Santa Fe Railway Company, in connection with defendants, the Southern California Railway Company and the Santa Fe Pacific Railway Company, constitutes and operates a line, part of what is known as the "Santa Fe System," extending from Los Angeles to Chicago, Ill.

At numerous junction points on these lines of the defendants and at their termini (Chicago, Ogden, and New Orleans) connection is made with other carriers, and through lines are formed over which the citrus fruit is transported on to practically all the markets of the United States.

This transportation from points of shipment in California to points of consignment in other States is conducted under a joint through rate fixed by the defendants and published in a joint tariff issued by them. The rate thus established is a single or "blanket" rate of $1.25 per hundred pounds, and the tariff names about 153 roads which are connections of defendants and participate in the through rate fixed by the tariff.

The rate of $1.25 had been in force a number of years previous to January 1, 1900, and has since been maintained. There has been no change in the rate since the citrus-fruit business became material in amount. (Rec., 70.) While, however, prior to January 1, 1900, shippers of citrus fruit had been allowed the privilege, or, more properly speaking, had exercised the right, of selecting the route beyond the roads of defendants over which their traffic should be transported by the connections of defendants, the tariff published by the defendants and made effective at that date promulgated a rule, called a "routing rule," by which this right of selecting the route was denied to the shippers and reserved to, or assumed by, the defendants as initial carriers. That rule is as follows:

"In guaranteeing the through rate named herein" ($1.25) "the absolute and unqualified right of routing beyond its own terminal is reserved to initial carriers giving guarantee." (Rec., 467.)

The shippers made complaint before the Commission, on various grounds, against this rule (Rec., 17, 18), and the Commission, after thorough investigation, held that the rule "in its application by the defendants" to the citrus fruit traffic "subjects the owners and shippers of such traffic to undue, unjust, and un-

reasonable prejudice and disadvantage, and gives to the carriers an undue and unreasonable preference and advantage." (Rec., 77.) This is a finding of a violation of section 3 of the act to regulate commerce, which provides, among other things—

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, *in any respect whatsoever*, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage *in any respect whatsoever*."

In pursuance of its said finding the Commission issued the order sought to be enforced in this case, which requires the defendants, after the 20th day of June, 1902,

"To cease and desist from maintaining or enforcing a rule or regulation whereby shippers of oranges, lemons, or other citrus fruits from points in southern California to points on and east of the Missouri River and other Eastern destinations are denied the right of designating for the transportation of their said property and having such property transported *over any of the defendants established and published joint or continuous lines or routes between any of the aforesaid points of shipment and destination at the published schedule rate or charge applying over such route or line*." (Rec., 84.)

The order further required the defendants, after the 20th day of June, 1902,

"To cease and desist from failing and refusing as initial carriers to keep open for the use of the public their published rate or charge for the transportation of oranges, lemons, and other citrus fruit from points in southern California to points on and east of the Missouri River for and during all of the time such rate or charge may be lawfully in force, over each and every

of the established routes upon which the said rate or charge is in their published joint schedules or tariffs stated to apply, and from further continuing their present practice whereby the application of such published rate or charge over any of such published established routes when specified by a shipper for the transportation of its property is allowed to or withheld from such shipper and the property shipped by him as they, the said defendants or either of them, may determine." (Rec., 84.)

Section 16 of the act to regulate commerce requires the courts to enforce "*lawful orders*" of the Commission. The question, therefore, in this case is whether this order is a lawful order, and that depends upon whether or not the "routing rule" of the defendants in question is a lawful rule or one which the defendants had the right to make.

II.

THIS CASE NOT WITHIN THE RULE OF THE COMMON LAW.

The defendants, in the first place, base their alleged right to make this rule upon the right of routing as they claim it exists at common law, and contend, in the language of the printed argument filed for the Southern Pacific Company in the court below, that "at common law the right was absolutely in the carrier to select his own route, his own instrument, his own agent, in shipping beyond his own line." (P. 16.)

This is not true absolutely. It is only true where the initial carrier assumes the common-law liability of a common carrier beyond its own line and on the lines of its connections. At common law a common carrier is "in the nature of an insurer" against damage or loss of goods during the carriage on its own line from any cause except the act of God or the public enemy (Red-

field, Law of Railways, Vol. II, p. 6; Chitty on Contracts, Sixth Am. Ed., p. 181), and the common-law rule giving the initial carrier the right to route the traffic beyond its own line only applies where the initial carrier practically extends its own line and becomes a common carrier with common-law liability over the entire route. The cases cited by counsel for defendants are of that character.

In Atchison, Topeka & Santa Fe R. R. Co. v. Denver & New Orleans R. R. Co., one of the principal cases relied upon by the defendants, this court says:

"At common law, a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go beyond he may, *in the absence of statutory regulations to the contrary*, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of the contract, *and if he holds himself out as a carrier beyond the line*, so that he may be required to carry in that way for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position, by extending his route with the help of others, than he would occupy if the means of transportation employed were all his own. He certainly may select his own agencies and his own associates for doing his own work." (110 U. S., 680.)

The court, it will be noted, bases the right of the initial carrier to choose the route beyond his own line on that carrier's holding "himself out as a carrier beyond his own line"—that is to say, upon his assuming the common-law liability of a carrier on the extended line.

In the present case the defendants, the initial carriers, contract for exemption from common-law liability and, therefore, beyond their own lines are mere forwarders

and not common carriers. On this point the Commission finds:

"Citrus fruits are carried at the $1.25 rate only at the owners' risk of 'damage from weather, decay, shortage, and delay,' and the transportation charge must be prepaid or guaranteed by the shipper."

(Transcontinental Freight Bureau, Eastbound Special Tariff, effective January 1, 1900. Rec., top p. 474.)

The Commission further finds:

"Neither does the initial carrier assume liability for damage resulting from the negligence of *any connecting line. Hence for such damage the shipper must seek recovery from such connecting carriers in distant States.*" (Report of Commission, Rec., 75.)

The reason of the rule giving the initial carrier the right of routing being the assumption by the carrier of responsibility for damage or loss occurring beyond its own line on the roads of its connections, and that reason not existing in the present case, the rule itself ceases. (*Cessante ratione, cessat ipsa lex.*)

The shippers, being compelled to seek recovery from connecting carriers for damage or loss, should for self-protection be allowed to select the route. On this point the Commission says in its report:

"One of the reasons frequently advanced against the compulsory formation of through routes by carriers is that they might thereby be forced to make traffic arrangements and interchange freight with insolvent connections; yet in the present case the shipper may, under the rule in question, be compelled to seek recovery of damages from an insolvent connecting carrier over whose road his traffic has been routed contrary to his express direction, or one that does not promptly or fairly adjust damage claims." (Commission's report, Rec., 75.)

In the opinion of the Circuit Court on the demurrer it is said:

"At common law, where the initial carrier undertakes to carry to a destination beyond its own line, the carrier has a right to select the connecting route. This, however, is because of the initial carrier's liability beyond its own road. Since, however, in the case at bar, the initial carrier is relieved of that liability, such carrier is beyond its own line really a mere forwarder, and it would seem, as contended by complainant, that, *under such circumstances, an application of the common law principles would give to the shipper, rather than to the initial carrier, the right of routing in* the absence of any agreement to the contrary." (Rec., bot. p. 1019, top p. 1020.)

It is thus seen that the reason which is invoked in behalf of the carrier's right of routing and upon which that right is based at common law applies in this case to the shipper, and not to the carrier. If the carrier is allowed the right of routing when necessary for self-protection, why should not the same rule be applied to the shipper?

III.

THIS CASE CONTROLLED BY THE PROVISIONS OF THE ACT TO REGULATE COMMERCE.

A further distinction between the case at bar and the cases cited in behalf of the defendants is the fact that the case at bar is controlled by the provisions of the act to regulate commerce.

In the quotation, *supra*, from the opinion in *Atchison, Topeka & Santa Fe R. R. Co.* v. *Denver & New Orleans R. R. Co.* (110 U. S., 667), this court recognizes that even where a carrier has contracted to carry beyond his own line, and therefore has the right

at common law to select the route, this right only exists in the "absence of statutory regulations to the contrary"—the language of this court being that "if he (the carrier) contracts to go beyond his own line, he may *in the absence of statutory regulations to the contrary*, determine for himself what agencies he will employ."

The routing rule of defendants is inconsistent with and contrary to the spirit, if not the letter, of section 6 of the commerce act which, among other things, provides:

"In cases where passengers and freight pass over *continuous lines or routes* operated by more than one common carrier and the several common carriers operating *such lines or routes* establish joint tariffs of rates or fares or charges for such *continuous lines or routes*, copies of such joint tariffs shall also in like manner be filed with the Commission. The joint rates, fares, and charges on such *continuous lines*, so filed as aforesaid, shall be made public by such common carrier * * *."

The various roads and routes beyond the terminals or junction points on the lines of defendants over which the transportation of citrus fruit is continued from said terminals or junction points to points of destination are published by the defendants in their joint tariff in connection with the rate. This is the invariable practice not only of these defendants but of all carriers. The tariff would be incomplete unless it named the routes, and the publication of the rate without naming the routes to which the rate is applicable would be of comparatively little service.

As section 6 requires that the rates "for continuous lines or routes" shall be filed with the Commission and made public by the common carrier, the routes to which the rate is applicable are made descriptive

of the rate, and it is manifest that the routes are as much a part of such tariffs as the rates themselves.

Section 6 also provides that "the Commission may determine and prescribe the form in which the schedules of rates for continuous routes shall be prepared and arranged," and the Commission, in pursuance of this authority, has ordered that such schedules shall "indicate the route and names of connections." (Rec., bot. p. 73.) This order being in pursuance of authority given by law, has all the force of the law itself.

Section 6 further requires that the schedules of rates for continuous lines or routes "shall be kept open to public inspection." For what purpose? Manifestly for the purpose of informing the public what routes are available to them and under what rates.

It will be noted that the order of the Commission only applies to these published rates and routes, and only requires the defendants to keep open to citrus fruit shippers these rates and routes which they have themselves established and published as available to the public; in other words, it allows the shippers to make selection from among these routes. It would seem natural and proper that, having paid the rate charged, the shipper should have the right of choice of the route over which his traffic shall be carried—particularly, as among routes established and published by the carriers under the law as those to which the rate is applicable. We contend that a rule denying this privilege or right is contrary to natural right and in conflict with the manifest purpose of the statute.

(This matter is forcibly presented in the report of the Commission, Rec., 73–75.)

Furthermore, if the common-law rule giving initial carriers, where they assume the liability of common

carriers beyond their own lines, the right of selecting their connections, has any application to the present case, that rule is fully satisfied by the fact that as to their regularly published routes beyond their own lines the defendants have selected their connections.

IV.

THE ROUTING RULE GIVES AN UNDUE PREFERENCE AND SUBJECTS TO AN UNDUE PREJUDICE IN VIOLATION OF SECTION 3 OF THE ACT TO REGULATE COMMERCE.

The Commission finds, as before stated, that the routing rule, "in its application by the defendants to the traffic in question subjects the owners and shippers thereof to undue prejudice * * *," and this is also alleged in Paragraph XI of the bill of complaint filed in the court below.

This is a finding and allegation of a violation of that provision of section 3 of the commerce act which forbids such preferences and prejudices as "to any particular person, company, firm, corporation, or locality or any particular description of traffic, *in any respect whatsoever.*"

Preferences or prejudices may be in respect to rates or routing or facilities or any other matter as to which a preference can be given or a prejudice inflicted, and therefore the statute, in order to cover every form of preference or prejudice, uses the all-embracing words "*in any respect whatsoever.*"

The connections of the defendants and the lines established by them beyond their own lines differ as to desirability. Some of these connections are better built, better managed and operated, and more reliable financially than others, and some of the lines are shorter and freer from risk than others and more

desirable in other particulars. Hence, while the rate by all is the same, there is a choice between them, and the shippers of all traffic except citrus fruit are allowed to avail themselves of this choice. The citrus-fruit traffic is the only kind of freight as to which the defendants deny to shippers the right of choice of route. (Rec., 62.) This clearly gives to other traffic and the shippers thereof an undue preference, and subjects citrus fruit and the shippers thereof to an undue prejudice. It is, moreover, an unjust discrimination against citrus fruit and the shippers thereof.

As said by the Commission in its report—

"If as matter of right the initial carriers, parties to the joint continuous routes, which with other carriers they have formed, may control the routing and deny the shipper any choice or control in a selection as between the different routes thus formed, then a route or tariff may be available to one shipper but not to another and open one minute to a shipper, but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shippers' business among one another from time to time or for any reason whatever. Such we do not believe to be the meaning of the law. We find nothing in the statute authorizing routes or tariffs of any kind available to shippers only at the option and in the discretion of the carriers and upon such varying conditions and circumstances as they may from day to day or from hour to hour see proper to be governed by, regardless of the wishes and interest of the shipper." (Rec., 73.)

V.

ROUTING BY INITIAL CARRIERS DESTRUCTIVE OF COMPETITION.

It is manifest that the routing of traffic by the initial carriers restrains or prevents competition between their connections. The connections over which the traffic

shall move beyond the roads of the initial carriers being determined by the initial carriers, there is no field for competition between those connections.

The routing of the traffic by the initial carriers so as to carry out their pooling agreement—that is, the routing of the traffic so as to give each of the initial carriers a certain territory and an equal or certain proportion of the traffic—also stifles competition between the initial carriers themselves.

Competition is favored by the laws. The object of the pooling section (sec. 5) of the interstate-commerce act is to prevent "any contract, agreement, or combination" between otherwise competing carriers by which competition between them may be done away with. In *East Tennessee, Va. and Ga. Ry. Co.* v. *Interstate Commerce Commission*, it is said: "The interstate-commerce law, it is conceded, was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect." (99 Fed. Rep., 61.)

This court holds that the suppression of competition is violative of the so-called "anti-trust act," in that such suppression restrains trade and commerce by "keeping rates and charges higher than they might otherwise be under the laws of competition." (Joint Traffic Association case, 171 U. S., 569, 571, 577; *U. S.* v. *Freight Association*, 166 U. S., 341.)

The ground upon which competition is favored is that it conduces to the reasonableness of rates or to the protection of the public from unreasonably high or excessive rates. In *U. S.* v. *Freight Association*, supra, this court says, "competition will itself bring charges down to what may be reasonable." (166 U. S., 339.)

The act to regulate commerce (sec. 1) in prohibiting unreasonableness of rates in effect forbids whatever conduces to such unreasonableness, therefore the routing rule, in that it stifles competition, is in violation of that act.

VI.

DEFENDANTS CONCEDE TO THE SHIPPER THE RIGHT TO SELECT THE ROUTE ON CONDITION OF HIS PAYING A HIGHER RATE (THE SUM OF THE LOCALS) FOR THE PRIVILEGE.

This Results in Violations of Sections 1, 2, and 6 of the Law.

The defendants concede to shippers of citrus fruit the right to ship over the route of their choice, but if it happens not to be the route of the defendants' choice they require the shippers to pay for the right; in other words, to pay a rate which is the sum of the locals of the several carriers composing the through line, this sum of the locals being much higher than the regularly established and published rate filed with the Interstate Commerce Commission.

Under this regulation the shipper of citrus fruit who chooses a route other than that selected by the initial carrier pays a higher rate than the shipper of the same kind and quantity of citrus fruit between the same termini for whom the carrier has selected the route in question. In both cases the carrier's risk and service are precisely the same and the traffic of both shippers may be on the same train, but a higher rate is exacted from the one than from the other.

This is an unjust discrimination in violation of section 2 of the act to regulate commerce which this court holds applies to shippers over the same line between

the same termini. (*Wight* v. *U. S.*, 167 U. S., 512.) That section forbids—

"The charging or receiving" (by a carrier subject to the act) "from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property * * * *than it charges or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.*"

This regulation of defendants as to the charging of local rates also violates that provision of section 6 of the law, which forbids the charging or receiving "from any person or persons a greater or less compensation for the transportation of persons or property between points as to which a joint rate, fare, or charge is named therein *than is specified in the schedule filed with the Commission in force at the time.*"

Furthermore, the exaction of the sum of the locals as a through rate results in an unreasonable or excessive rate, in violation of section 1 of the law.

Local rates are made for strictly local hauls and are many times higher per ton per mile than proportions of through rates for the same distance. This is because of the well-established fact that local hauls are much more expensive per mile to the carrier than long through hauls.

In *King* v. *Railroad Company* (4 I. C. C. R., 262) it is said:

"The local rates are made for many trains that run slow, stop generally at every station, delivering and taking on freight, chiefly in parcels not loaded or unloaded by the shippers or consignees, but loaded or unloaded

by the servants of the company. (They, of course, carry freight occasionally in carloads to local points.) Such shipments are, of course, much more expensive than through freights, and for such services an additional charge is reasonable, and the laws permit it."

After quoting the above, the court, in *Augusta Southern Railroad Company* v. *Wrightsville and Tennille Railroad Company* (74 Fed. Rep., 527), says:

"No fair or equitable construction will justify the exaction of local rates for freights not local, where services belonging to local rates is not offered."

In *Minneapolis and St. Louis R. Co.* v. *Minnesota* (186 U. S., 262) the Supreme Court says:

"There is an underlying fallacy in the argument of the railroad company in this connection that the sum of two reasonable local rates can not be unreasonable. * * * We can not assent to this proposition. The practice of railways in this country is almost universally to the contrary, and a through tariff is almost always fixed at a less sum than the aggregate of local tariffs between near-by stations on the same road. * * * There is an increased cost of local business over through business in the additional fuel consumed and the increased wear upon the machinery of each train involved in stopping at every station."

(See also *Chicago, etc., Ry. Co.* v. *Tompkins*, 176 U. S., 167.)

The shippers, therefore, if they exercise their right to select from among the established routes of the defendants the route of their choice, *are punished:*

First, by being made to pay rates higher than other shippers over the same route and between the same termini, *in violation of section 2 of the law.*

Secondly, by being made to pay rates other than the regularly established and published rates of the defendants, *in violation of section 6 of the law;* and

Thirdly, by being made to pay excessive rates (the sum of the locals), *in violation of section 1 of the law.*

This regulation as to the exaction of local rates is a condition attached to or a part of the routing rule itself, and being unlawful renders the rule unlawful.

VII.

THE ROUTING RULE ESSENTIAL TO AND ADOPTED AND USED FOR THE PURPOSE OF CARRYING OUT A POOLING OR DIVISION OF TRAFFIC ARRANGEMENT BETWEEN THE DEFENDANTS; THEREFORE, UNLAWFUL UNDER SECTION 5 OF THE ACT TO REGULATE COMMERCE.

THE ROUTING RULE NOT THE PROPER REMEDY FOR REBATES.

The testimony shows beyond any question that (1) there is an arrangement between the defendants for a pooling or division of the citrus-fruit traffic between them in certain proportions, and that (2) the routing rule is essential to the carrying out of that arrangement, and (3) was adopted and is used for that purpose. (Rec., 187–190, 197–198, 288, 214–215, 599 et seq., 715 et seq., 369, 608. See argument of Mr. Call, pp. 32–41.)

The Commission so finds (Rec., 67, 68, 74–75), and so does the Circuit Court (Rec., 1026–1034).

It is claimed in behalf of the defendants that they adopted the routing rule for the purpose of putting a stop to the payment to the shippers of rebates by the refrigerator companies and the connections of defendants beyond their own lines. The Commission finds, and the testimony amply sustains the finding, "that the suppression of the practice of allowing rebates was only an incidental result of and was not the primary or principal object of the defendant carriers in taking

over to themselves the control of the routing beyond their respective roads, but that the object was to give effect to the tonnage division."

(Rec., bot. p. 74, top p. 75.)

Conceding that the routing rule was adopted to cure the evil of rebates, being essential to the carrying out of a pooling arrangement and being used for that purpose, it is unlawful under the pooling section (sec. 5) of the commerce act and is equally as reprehensible as the practice of paying and receiving rebates. It is no excuse for one violation of law that it incidentally puts a stop to another. On this point the Circuit Court in its opinion on the demurrer says:

"It is no justification of said rule and practice" (routing rule) "that they are designed to prevent and do prevent unlawful rebates from connecting lines to shippers. Pooling and rebates are both within the prohibitions of the interstate-commerce act and one can not be employed as a preventive of the other." (Rec., bot. p. 1022.)

The statutes provide criminal prosecutions and heavy penalties for the enforcement of the laws prohibiting rebates. (Section 10, act to regulate commerce; section 1, "Act to further regulate commerce," etc., approved February 19, 1903, called the "Elkins Act.") These should be resorted to rather than the unlawful practice of pooling.

That the defendants desire and use routing for the purpose of promoting a pooling arrangement, is shown not only by the testimony above cited and by the findings of the Commission and of the Circuit Court, but also by the following three significant facts:

1. Citrus fruit is the only kind of freight as to which the defendant carriers insist upon designating or controlling the routing to eastern markets.

2. Citrus fruit traffic is the only traffic that is pooled or shown to be covered by a tonnage division arrangement.

3. Without the power of routing, the traffic could not be pooled. If shippers route the traffic, it will necessarily render pooling by the carriers impracticable.

VIII.

MANY CONTROLLING REASONS WHY IN THIS CASE THE INITIAL CARRIERS SHOULD NOT HAVE THE RIGHT OF ROUTING.

The Post case (*Post et al.* v. *Southern R. Co.*, 103 Tenn., 220) is cited by the defendants as sustaining their claim to dictate the routing of citrous fruit traffic, and this extract from the opinion of the Tennessee court in that case is relied upon:

"We are of the opinion that upon the main questions as to the right of the carrier and shipper to designate the route of through shipment at through rates, all other questions being out of the way, the law is and should be that, *in the absence of a sufficient or controlling reason to the contrary*, the carrier should have that right."

It will be noted that the court holds that the carrier has the right of routing only "in the absence of a sufficient or controlling reason to the contrary."

As we have shown, there are many "sufficient and controlling reasons" why the defendants should not in this case have the right of routing. Among them are:

1. Routing by the initial carrier restrains or stifles competition, and is therefore unlawful not only under the act to regulate commerce but under the "anti-trust act," as held by this court in the Joint Traffic Association case.

2. The right of routing gives the initial carrier the power to discriminate between its connections.

3. The right of routing gives the initial carrier the power to discriminate between shippers by giving one the most desirable route and denying it to another.

4. The right of routing gives the initial carrier the power to discriminate between different descriptions of traffic.

5. This power of discrimination is exercised in this case as the right of routing is claimed and practiced only as to citrus-fruit traffic and this is a discrimination against that traffic and the shippers thereof in favor of other traffic and the shippers thereof.

6. The right of routing is essential to the carrying out of a pooling arrangement, and is desired and used in this case for that purpose.

7. Routing by the initial carrier deprives the shipper of the valuable privilege of diverting the traffic *en route* to a more desirable market than the market of original consignment.

8. The initial carriers are not entitled to route the traffic beyond their own roads, because they have contracted for exemption from the common-law liability of a common carrier both on and beyond their own roads.

9. If damages results from negligence of connecting carriers, shippers have to proceed against those connecting carriers, and therefore should have the right of selection as to them.

IX.

THE RIGHT OF ROUTING VALUABLE TO THE SHIPPER—NO CONSIDERATION FOR ITS SURRENDER.

The right of selecting the route over which his shipments shall move is valuable to the shipper, because:

1. It enables the shipper to take advantage of the best and most expeditious route and to select a line made up of carriers financially responsible and from

whom damages can be recovered in case of injury or loss.

2. It enables the shipper, when it is to his interest to do so, to divert the traffic *en route* to another market than that to which it is originally consigned. The testimony shows that this is frequently to the shippers' interest. On this point the Commission finds,

"Prior to January 1, 1900, shippers were permitted by the defendants to exercise the right to control the route *and to divert the freight from the destination point or route named in the bill.* This right to control and to divert shipments before they reached their billed destination is claimed by complainants as a legal right, the exercise of which is necessary to the proper and profitable marketing of these products. The shippers individually or through their freight exchanges are kept advised of the state of the market in eastern cities and they frequently find it of great advantage to have a car which has been billed to Chicago, for instance, stopped at Kansas City, St. Louis, or some other point or sent on farther east to Cincinnati or to New York, where at the time the demand may be greater and price higher than in Chicago. *This practice of diverting carload shipments from the original destination is common and it is usually allowed by carriers throughout the country.* * * * Numerous examples appear in the testimony and are used by complainants in their brief showing that to divert a car to some points or to specified territories the freight *must be sent over particular routes* and that it is necessary for the proper carrying on of his business that the shipper should know and control the route." (Rec., bot. p. 59, top p. 60, 152, 237–8, 257, 274, 983.)

The defendants, while depriving the shippers of the right of routing, so valuable, if not essential, to them, give nothing in return or by way of compensation. There is no reduction in the rate and no assumption of liability for loss or damage.

X.

CONTENTION THAT THE ROUTING RULE IS A TERM OF A CONTRACT GUARANTEEING THE THROUGH RATE AND IS THE CONSIDERATION FOR WHICH THE GUARANTY IS GIVEN.

It is contended in behalf of the defendants that the right of the initial carriers to route the traffic is an essential term of a contract guaranteeing the rate or the consideration upon which that guaranty is based and that the abrogation of the routing rule will carry with it the rate. On this point the Commission says in its report:

> Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established and until finally abrogated or changed they are required by the statute to be kept open to public use. * * * The formation of through routes is not compulsory, but when established and so long as they exist, the obligations, restraints, and regulations of the law attach to them in all respects as fully as to a line composed of a single road." (Rec., 72.)

The Circuit Court says:

> While it is unquestionably true, as contended by the defendants, that joint tariffs over continuous lines are purely matter of voluntary arrangement between the carriers themselves, about which they may specially contract, yet this power of contracting, of course, *is subject to all the prohibitions of the commerce act as well those against pooling as those against unjust charges and discriminations.*" (Rec., 1035.)

If, as we have endeavored to show, the routing rule is an unlawful rule and in violation of both sections 3 and 5 and other sections of the commerce act, it can not defeat the right of the public to have a reasonable rate kept open to shippers. The rate of $1.25 per

hundred pounds has been in effect both before and since the adoption of the routing rule, and in fact ever since the citrus fruit business has become important in amount. (Rec., 70.) Having been maintained before the adoption of the routing rule, presumably it was considered by the defendants reasonable in itself in the absence of that rule. It will hardly be contended that the attachment of an unlawful rule or condition to a reasonable rate will defeat the right of the public to the benefit of that rate. The whole question, then, we may say, is whether or not the routing rule is a lawful rule. We think we have shown that it is not.

The law itself guarantees the shipper a reasonable through rate over every through route established and published as required by the law. In reference to this the Commission says:

"So long as the through route exists the rates established thereon are guaranteed by command of the law itself to every shipper without discrimination, and no greater guarantee can be given by the initial carrier." (Rec., 74.)

If rates fixed by common carriers can in any proper sense be considered as springing from a contract between the shipper and the carrier, such contract differs essentially from a strictly private contract between individuals. If a contract at all, it is a contract to which the public is a party and is subject to all the limitations and conditions prescribed in the laws enacted for the purpose of regulating common carriers in the interest of the public. Such laws are terms of every such so-called contract. Common carriers are quasi-public corporations deriving their franchises or "their right to exist," in the language of this court,

from the public, and the consideration upon which those franchises are granted is the duty imposed upon the carriers to consider and promote the interest of the public and particularly in the matter of rates.

As stated in the preceding subdivision of this argument, there is no consideration whatever passing from the defendants to the shippers for the surrender by the shippers of the valuable right of routing their traffic. The rate was not reduced and the defendants still, as before, contract for exemption from liability not only on the lines of their connections but on their own lines. (Citrus Fruit Tariff, effective January 1, 1900, Rec., top p. 474.)

The routing rule being unlawful, the contract guaranteeing the rate prior to the adoption of the routing rule stands and can not be invalidated by that rule.

Moreover, these so-called contracts between the carrier and the public fixing rates, lack an essential element of a contract. The shippers or the public are not in fact parties to the making of rates. The action of the carriers in fixing rates and attaching conditions is *ex parte*. The public has no voice in the matter. These defendants are the only initial carriers of citrus fruit from southern California and, therefore, have a monopoly of that business. The shipper must accept the rates and the conditions imposed by the defendants or not ship their traffic to market. They are in this matter at the mercy of the defendants. They may in fact be said to be under duress.

The law, on grounds of public policy, will not sanction a condition in a bill of lading exempting the carrier from liability on account of his own negligence. Will it be contended that the guaranteeing

of a rate on condition that the guarantor shall be exempt from liability for damage resulting from his own negligence will defeat the right of the public to the rate freed from such unlawful condition?

XI.

NONJOINDER OF PARTIES DEFENDANT.

The defendants in the court below interposed a general demurrer and also a demurrer on the specific ground that there is a nonjoinder as parties defendant of the connections of the defendants and that such connections are necessary parties.

The citrus-fruit tariffs are published and issued by the defendants as initial carriers, and reserve to the defendants *alone* the right of routing the traffic. If it be conceded that the connections are *proper* parties where the right of only the initial carriers to route is in question, they are not *necessary* parties.

(*I. C. C.* v. *Texas & Pacific Ry. Co.*, 52 Fed. Rep. 188; 162 U. S. 205.)

In the above case there were involved *joint* through rates established by the Texas and Pacific Railway Company and the Southern Pacific Company over the *joint* through line of these two companies from New Orleans to San Francisco. The case involved the legality of the joint through rates of these two roads over this joint through line, but *the suit was against the Texas and Pacific Railway Company alone.* It was pleaded in abatement by the Texas and Pacific Railway Company that the Southern Pacific Company was a party to the joint through rates and was therefore a necessary party defendant. The Circuit Court overruled this plea and its decision was affirmed by this court. The Circuit Court says:

"If the order made by the Commission was a lawful one, I see no reason why the defendant should not be compelled to obey it, notwithstanding the Southern Pacific Company is not at present pursued. If the defendant is violating a proper order of the Commission, it should be restrained from doing so; and it can not escape upon the objection that another wrongdoer is also violating it." (52 Fed. Rep., 188.)

This court sustained this ruling of the Circuit Court, using the following language:

"Another objection urged is that, as the order of the Commission involved rates participated in by the Southern Pacific Company as owner of a portion of the line over which the through freight is carried, that company was a necessary party. Undoubtedly that company would have been a *proper* party, but we agree with the Circuit Court in thinking that it was not a *necessary* one." (*Texas and Pacific Ry.* v. *I. C. C.*, 162 U. S., 205.)

The fact, therefore, that the connections of the defendants constitute parts of through lines with the defendants and participate with them in the through rate over those lines would not render them *necessary* parties defendant, even if the through rate were the matter under consideration. *A fortiori* it does not where the right of routing by the defendants as initial carriers is alone in question. The connections, it is true, are interested in this matter of routing. Their interest, however, is in the direction of having the routing rule abolished.

XII.

POWER OF THE COMMISSION TO MAKE THE ORDER IN QUESTION.

It is contended in effect that the Commission has no authority to make an order such as the order in question relating to routing, because such authority is

not expressly granted in the act to regulate commerce. If this be true, the Commission has no power to prohibit undue preferences or undue prejudices of any kind whatsoever under section 3 of the law.

Section 3 is general, prohibiting "undue preferences" and "undue prejudices" without defining or setting forth what shall constitute such preferences and prejudices. The most usual form of preference or prejudice is in rates; but, if the contention of counsel for the carriers be sound, the Commission would have no power to issue an order forbidding preferences in rates, because section 3 does not specifically prohibit such preferences.

As heretofore shown, section 3 forbids preferences and prejudices of every conceivable character: not only between "persons, companies, firms, corporations, and localities," but also between "particular descriptions of traffic," and forbids such preferences and prejudices "IN ANY RESPECT WHATSOEVER."

The preferences and prejudices forbidden may be in respect to rates, or routes, or cars, or in the distribution of cars, or in the furnishing of facilities for the interchange of traffic, or in any of the various forms in which a preference or advantage may be given or an injury or prejudice inflicted.

In *I. C. C.* v. *Ry. Co.*, 167 U. S., p. 506, this Court holds that the Commission is charged with the duty of enforcing section 3, as follows:

"The Commission is charged with the duty of seeing * * * that no undue preferences are given to one place or places, or individual or class of individuals, but that in all things, that equality of right, which is the great purpose of the interstate commerce act, shall be secured to all shippers."

If section 3 of the law is not void for indefiniteness, and the rule of the defendants in question gives an undue preference or subjects to an undue prejudice within the meaning of that section, then the order of the Commission requiring the defendants to cease and desist from enforcing that rule is an order within the jurisdiction of the Commission.

Respectfully submitted.

L. A. SHAVER, *Solicitor.*

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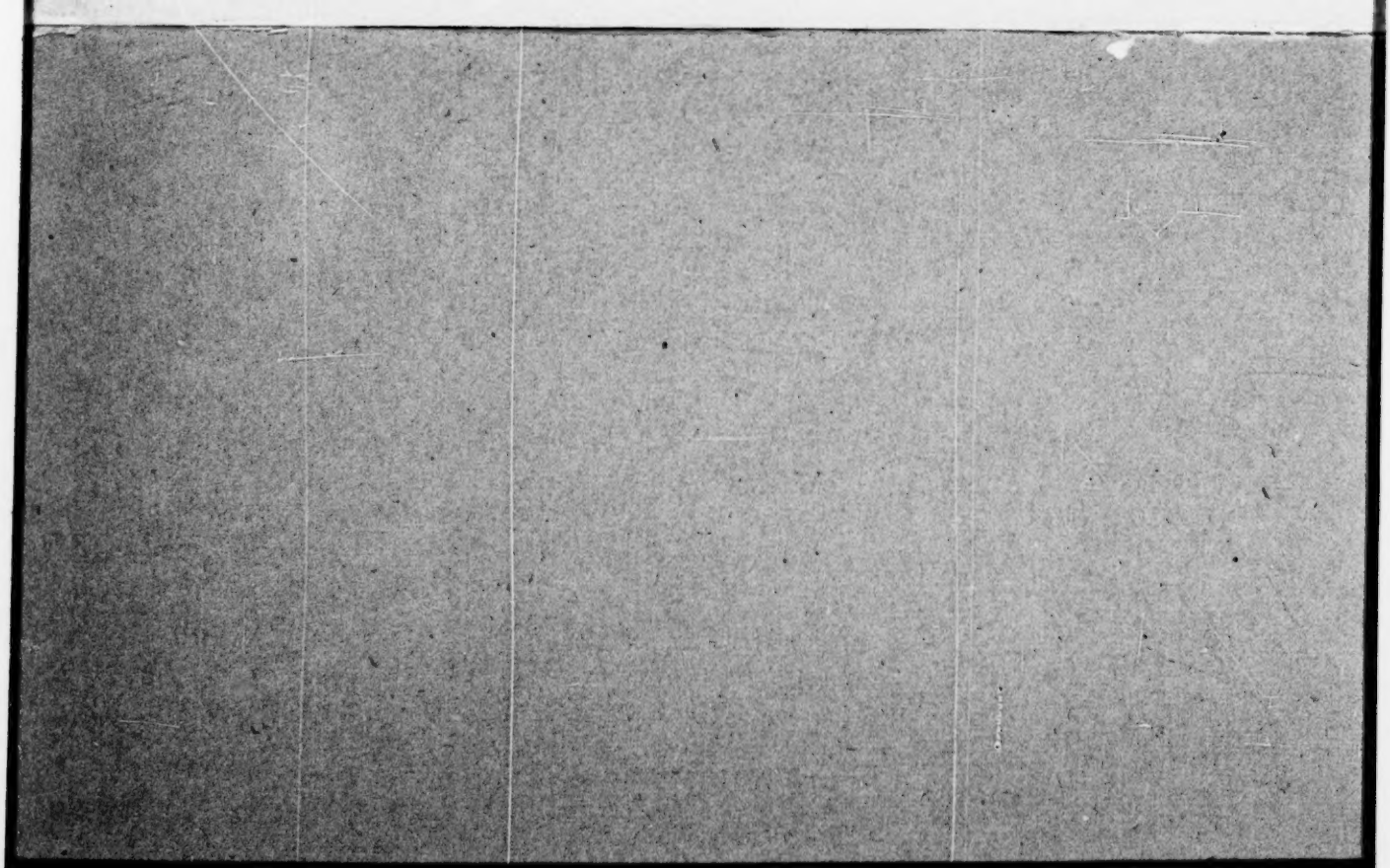

Supreme Court of the United States.

Nos. 158, 159, 160, 161 and 162.—October Term, 1905.

Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, Santa Fe Pacific Railroad Company, and Southern California Railway Company, Appellants,
158 *vs.*
The Interstate Commerce Commission.

Southern California Railway Company, Appellant,
159 *vs.*
The Interstate Commerce Commission.

Atchison, Topeka and Santa Fe Railway Company, Appellant,
160 *vs.*
The Interstate Commerce Commission et al.

Santa Fe Pacific Railroad Company, Appellant,
161 *vs.*
The Interstate Commerce Commission et al.

Southern Pacific Company, Appellant,
162 *vs.*
The Interstate Commerce Commission.

Appeals from the Circuit Court of the United States for the Southern District of California.

[February 26, 1906.]

These are appeals from orders or decrees of the Circuit Court of the United States for the Southern District of California, in proceedings wherein that court affirmed, and ordered to be enforced, the determination of the Interstate Commerce Commission, relating to the above-named railroad companies, directing them to desist from maintaining or enforcing a rule adopted by them and pertaining to shippers of oranges and other citrus fruits in Southern California, whereby those shippers were denied their alleged right of designating the routes for the transportation of their property from California to the Eastern markets, under a tariff of through rates, as mentioned in the orders or decrees.

The proceeding in each case was commenced before the Commission under sections 13, 14 and 15 of the Interstate Commerce Act, (U. S. Comp. Stat. pp. 3154–3164; 24 Stat. 379,) by the filing of a petition with the Commission, on the part of certain corporations of the State of California, called the Con-

solidated Forwarding Company, and the Southern California Fruit Exchange, engaged in the business of shipping oranges and other citrus fruit from Southern California to the Eastern markets. The proceeding was continued in the Circuit Court under section 16 of the act. The petition charged the railroads with various violations of the Interstate Commerce Act, including specially the agreement for "routing," hereinafter set forth, and asked the Commission to enjoin such companies from any further violation of the act. The companies put in answers to the petition, denying its material averments.

Testimony was then taken before the Commission, and the following, among other facts, were shown:

The through tariff of rates from California to the East, with the right of routing, which had been agreed upon between the companies complained of (hereinafter called the initial carriers) and their Eastern connections regarding the orange and other citrus fruit transportation was in force January 1, 1900, and these proceedings were commenced February 26, 1900. Before the adoption of the rule for routing there had been among the Eastern connections of the initial carriers under the through joint tariff rates then existing, the greatest rivalry to obtain the California fruit freight business, and this rivalry led, on the part of the connecting carriers, to a system of rebates from the through tariff rates, which was a clear violation of the commerce act, and was demoralizing in every way to honest business. Indeed, the president of one of complainants before the Commission admitted that his company (the Southern California Fruit Exchange) had in four years received rebates to an amount of over $174,000. The practice had become so general that the shippers came to regard a rebate as part of the legitimate returns from the orange business. Among those who participated in this system of rebates were what is termed the car line companies, which were incorporated companies owning cars in which the fruit was packed, described as ventilator or refrigerator cars, which were peculiarly adapted to the carriage of the fruit, and were hired by the initial carriers because they did not want to own equipment cars which they could keep in service only part of the year, while the car companies could use the cars for other purposes in other parts of the United States when the orange transportation was over. These car companies made arrangements with the connections of the initial carriers east of Chicago and New Orleans, by which a certain bonus, varying from $10 to $40 per car, was given the car line companies, in consideration of the car being routed over the line paying the bonus, a part of the bonus, varying from a quarter to a half, being usually turned over to the shipper by the car company, for the privilege allowed the latter of routing the shipment.

The initial carriers form two systems, one called the Southern Pacific System and the other the Santa Fe System. There are numerous points of junction on these lines of the defendants, where connection is made with other carriers, and at their termini in Chicago, Ogden and New Orleans such connection is made, and through lines are formed over which the citrus fruit is transported to practically all the markets of the United States. The two systems are the only ones which reach the section of country where the orange industry in Southern California exists, and they about equally divide the transportation of the oranges therefrom. The Commission said the evidence was unsatisfactory as a basis for a conclusion whether the initial carriers pooled their citrus fruit traffic or divided the earnings therefrom, and it therefore retained such question for further hearing and investigation.

Prior to January, 1900, the rebates by the Eastern companies, already referred to, had become so great and demoralizing that the initial carriers at length determined to try and crush the whole thing. The connecting carriers were themselves dissatisfied with this state of things, but each felt it necessary in order to compete with the others. It had been assumed that the car line companies were not common carriers, and were not within the commerce act, and therefore they were more ready to indulge in the practice of getting rebates whenever they could, and paying part of the amount to the shippers for giving them the right to route the shipment. Prior to the adoption of the through rate tariff with this rule under discussion, the shippers had been permitted by the initial carriers to control the routing of the freight, and also to divert it, en route, from the destination point named in the bill. In order to stop the rebating on these joint through rates it was proposed to agree upon a through rate tariff, to be assented to and accepted by the railroads interested in the fruit transportation, or by as many of them as possible, with the rule in question to form part of the agreement. Such a tariff agreement was made between some of the roads, (and subsequently assented to and joined in by most of the roads,) and filed with the Commission, for the transportation of oranges and other citrus fruit from Southern California at $1.25 per hundred pounds, to practically all points east of the Missouri River. The tariff agreed upon by the companies contains the rule complained of, which is part of such agreement, and by it the initial carriers agreed to guarantee the through rates to the shipper, but only on the following conditions:

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving the guarantee. In accordance with this rule, agents will not accept shipping orders or other documents, if routing instructions are shown thereon. Neither will agents accept verbal routing instructions."

Another rule reads:

"Initial carrier will route each car from point of origin to point of destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein."

Notwithstanding the rule thus published in regard to routing, the initial carriers generally thereafter permitted the shippers to route the cars containing their fruit as they desired. The right to divert freight from the destination point or route named in the bill of lading and before the freight reached the billed destination, had been exercised generally by shippers, and had been allowed by the carriers throughout the country, and the practice was regarded of value to the shippers, as it enabled them sometimes to realize higher prices than they otherwise might if the freight were continued to the original destination. This diversion by the shippers also continued to be generally allowed.

The reason for the rule, reserving to the initial carrier this right to route the traffic, is stated to have been because it enabled the initial carriers to secure the discontinuance of the practice of paying rebates. Since the adoption of that rule the rebates which had been paid to shippers and to owners of car lines were discontinued, and the Commission says there is no evidence that the practice has been resumed. They were discontinued for the obvious reason that the shippers could not control the route, and hence it would be useless for the Eastern railroad company to pay the shippers or the car line companies rebates on freight the Eastern company might not receive and which the initial carrier alone had the routing of. As soon as the routing was agreed upon and the through tariff rates fixed, the Eastern connections had to do business with the initial carriers instead of the car company or the shipper. The shippers prepay or guarantee freight charges to destination. The initial carrier does not assume liability from damage resulting from negligence of any connecting line.

The Commission (the chairman, Mr. Commissioner Knapp, dissenting) ordered the defendants to cease from exacting from the shippers the right to themselves make the route which the freight should take. The ground taken by the Commission was that such routing by the initial carriers subjected the shippers to undue, unjust and unreasonable prejudice and disadvantage, and gave to the carrier an undue and unreasonable preference and advantage, and was a violation of the third section of the act.

The initial carriers, believing the Commission had erred in its decision, refused to obey the order which it made, and thereupon the Commission, pursuant to the sixteenth section of the act, filed its bill in the Circuit Court for the purpose of enforcing its order.

The bill thus filed by the Commission was demurred to by the defendants, and the demurrer was overruled. (123 Fed. 598.)

The railroad companies then answered, and the case, after the taking of further evidence, came up for final hearing, when the order of the Commission was affirmed and directed to be enforced, (132 Fed. 829,) although the Circuit Court put the affirmance on the ground that the agreement as to routing showed that there was a violation of section 5 of the Interstate Commerce Act, in that such agreement amounted to a contract or combination for the pooling of freights. The court passed upon no other question raised in the case. A very full statement of facts is contained in the report in 132 Fed. *supra.*

A motion was made for a supersedeas pending the hearing of this appeal, which, for the reasons stated in the opinion of the Circuit Court, was denied. (137 Fed. 606.)

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

Although there are separate proceedings in these various cases, the question arising in all is identical and the cases will hereafter be spoken of as if there were but one proceeding before the court. The single question presented is, has the carrier that takes the fruit from the shipper in California the right, under the facts herein, to insist upon the rule permitting such carrier to route the freight at the time it is received from the shipper?

The Commission has decided that the carrier has not the right, and that the rule denies to shippers the use of their transportation facilities, which such shippers are entitled to, and that in its application, by the initial carriers to the fruit traffic, the shippers are subjected to undue, unjust and unreasonable prejudice and disadvantage, and the carriers are given an undue and unreasonable preference and advantage. If this be the necessary effect of the rule, it may be assumed to be a violation of section 3 of the Interstate Commerce Act, and the Commission, therefore, rightly ordered the carriers to desist from observing it.

By section 16 of the act, the Circuit Court is given authority to enforce "any lawful order or requirement of the Commission." If the order be not a lawful one, the court is without power to enforce it. Whether or not such order was lawful is the matter to be determined.

The Commission does not find that any contract existed between the initial carrier and its Eastern connections to bill the fruit according to certain proportions among the connecting railroads. The Commission said:

"The situation warrants the inference, however, that these two initial carriers or systems, connecting with other carriers at various points, and they in turn connecting with numerous other carriers, as shown by the tariff, are able, by acting in concert, and routing as they see fit, to only send traffic over the roads of such carriers as fulfilled an agreement to re-

frain from making any rate concession to the shippers, and some influence of like character could doubtless be exerted by them upon the car lines which are also hereinafter referred to."

Such statement simply shows that if any Eastern railroad, with which an agreement for joint through rates existed, should give rebates on the joint through rate tariff, thus carrying freight below the rates agreed upon as the through rate tariff, that road would not get the freight.

We see nothing in the initial carrier endeavoring to maintain the rates agreed upon as a through rate tariff, and thereby preventing the payment of rebates, which in itself is a violation of the act. The act especially prohibits, in the sixth section, any alteration of the rates agreed upon, in favor of any person or persons. There is no finding that there has in fact, as a result of the rule, been any discrimination or unjust action as between the initial carriers and the shippers themselves, and there is no evidence that any was ever practiced.

In the examination of the rule it is well to bear in mind the situation of the companies and the business at the time of its adoption. It is fully set forth in the foregoing statement of facts. The payment of the rebates was a shame and was in truth unsatisfactory to all the railroads, besides being plainly a violation of the commerce act.

We think there is nothing in the act which clearly prohibits the roads from adopting the rule in question. The decision turns upon the construction of a statute which at least does not in terms prohibit.

In cases such as this a court is bound to consider the bearing of the result of either construction upon the general purposes of the act. In enacting the commerce act this court has stated that the object of Congress was to facilitate and promote commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or discriminations. (*Texas etc. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197.)

The importance of the rule in this case, so far as the shipper is concerned, is not so great as is its importance to the railroads in preventing rebates. If the right of routing be looked at alone, without any connection with the claimed right of diverting the freight, the rule itself would be generally of little importance to the shipper. In all probability the freight gets to its destination when routed by the carrier as early as if routed by the shipper, and in that event the particular route taken is not very important to the latter. The evidence before the Circuit Court shows that the routing, when done by the carrier, was fairly apportioned among the Eastern connections, having an eye to good service and expedition, and the roads that the routing was done over were the best roads in the country; the roads that have been eliminated were the roundabout roads; there were no roads that were insolvent, so far as

known by the witnesses. Now, as the fact appears that the actual routing is generally conceded the shipper, and also his request for a diversion allowed, there is nothing in the mere right of routing by the companies, separate from other facts, of which the shipper can properly complain. The Commission says it does not distinctly appear in testimony that a delivery by a particular terminal road has been denied in any particular case, yet the manifest evil results of an arbitrary application of the rule must be considered in determining its legality. If there is no such arbitrary application, we do not agree that the rule itself is to be held illegal, because a violation of the act may be committed, while the evidence is that none in fact was committed. It does appear that the mere existence of the right to route on the part of the company has ended the practice of rebating. But the opportunity to obtain rebates on the part of the shipper is surely not a ground for action by the Commission or by the court. Of course, if in attempting to cut off rebates there is a violation of the act, the act must be followed, and that means of prohibiting them must be abandoned. Courts may well look with some degree of care before so construing a statute, which confessedly does not in terms so provide, as to prohibit such a rule on the ground that it would be a violation of the statute. We are of opinion that the rule is not a violation thereof.

It is conceded that the different railroads forming a continuous line of road are free to adopt or refuse to adopt joint through tariff rates. The commerce act recognizes such right and provides for the filing, with the Commission, of the through tariff rates, as agreed upon between the companies. The whole question of joint through tariff rates, under the provisions of the act, is one of agreement between the companies, and they may, or may not, enter into it, as they may think their interests demand. And it is equally plain that an initial carrier may agree upon joint through rates with one or several connecting carriers, who between each other might be regarded as competing roads.

It is also undoubted that the common carrier need not contract to carry beyond its own line, but may there deliver to the next succeeding carrier and thus end its responsibility, and charge its local rate for the transportation. If it agree to transport beyond its own line, it may do so by such lines as it chooses. (*Atchison etc. Co.* v. *Denver etc. Co.*, 110 U. S. 667; *Louisville & Nashville R. R. Co.* v. *West Coast Naval Stores etc. Co.*, 198 U. S. 483.) This right has not been held to depend upon whether the original carrier agreed to be liable for the default of the connecting carrier after the goods are delivered to such connecting carrier. As the carrier is not bound to make a through contract, it can do so upon such terms as it may agree upon, at least so long as they are reasonable and do not otherwise violate the law. In this case the initial carrier guarantees the through rate, but only on condition that it has the routing. It was stated

by the late Mr. Justice Jackson of this court, when Circuit Judge, in the case of *Texas etc. Co.* v. *Interstate Commerce Commission*, (43 Fed. 37,) as follows:

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits."

This statement was approved by this court in *Cincinnati etc. R. R. Co.* v. *Interstate Commerce Commission*, (162 U. S. 184–197.)

Having this right to agree on a joint through tariff on terms mutually satisfactory, we cannot find anything in the commerce act which forbids the agreement with such a condition therein as to routing. It is said that the sixth section, properly construed, prohibits such condition. We confess our inability to find anything in that section which does so.

The fact that the rate, when agreed upon, must be filed with the Commission and made public by the common carriers when directed by the Commission, does not prevent the adoption of an agreement for a through rate tariff with the condition as stated. Nor does the provision granting power to the Commission to prescribe forms of schedules of rates, as provided for in the sixth section, have any such effect. Where there is an agreed through rate tariff, and as part of such agreement, which is joined in by several railroads, the right to route cars is reserved to the initial carrier, we do not think that the shipper, by virtue of the sixth section, has the right to ignore the condition which is part of the agreement under which the through rate is made and is guaranteed.

We cannot see that the rule violates the third section of the act. All the facts referred to by the Commission are nothing but statements as to how, under such a rule, there might occur a violation of that section, but we find nothing in the facts stated by the Commission, showing that such violation had occurred. In truth, the companies did not always even enforce the rule, still less did they discriminate against shippers or in favor of carriers. On the contrary, the Commission stated that "while the initial carriers do not always route as requested by the shippers, they generally comply with their request." The mere failure to do so does not, however, prove a violation of the section.

The right to route is also complained of because the rule confined it to the fruit business, and therefore it was, as contended, a discrimination against those engaged in it or against the traffic itself. The transportation of this fruit is a special business, large interests are involved in it, and

particular pains are taken to transport it as speedily as possible. With regard to all other freight it has substantially nothing in common. The cases are wholly unlike, and there has been no proof or complaint as to rebates being given in connection with other freight, and the witnesses for the railroad state if there were any evidence or complaint of such rebates, the same rule as to routing would be immediately adopted. As has been said, there is no pretense of discrimination under this rule between the shippers of freight themselves. There seems to be unanimous agreement that all shippers are treated alike and are granted the same privileges, and the routing is generally accorded them. It is the power to route, which rests with the initial carrier, that really takes away the motive for a rebate in the manner indicated, and, therefore, the granting of the request of the shipper as to a particular route may be, and is, generally conceded without danger that the rebate business may be again practiced.

The important facts that control the situation are that the carrier need not agree to carry beyond its own road, and may agree upon joint through tariff rates or not, as seems best for its own interests. Having these rights of contract the carrier may make such terms as it pleases, at least so long as they are reasonable and do not otherwise violate the law. We think the routing rule is not unreasonable under the facts herein and that it does not violate the third section of the act.

Because opportunities for the violation of the act may occur, by reason of the rule, is no ground for holding as a matter of law that violations must occur, and that the rule itself is therefore illegal. We are, consequently, unable to concur in the view taken by the Commission that the rule violates the third section of the act.

Upon the proceeding before the Circuit Court, that court did not pass upon the question decided by the Commission, but held that the routing rule agreed to between the initial carrier and the various Eastern companies, and forming a part of the subsequent joint through tariffs which were filed with the Commission, was in itself a contract or combination for the pooling of freights.

The defendants object that the Circuit Court had no authority to decree the enforcement of the order upon any other ground than that taken by the Commission itself. We think that the court was not confined to those grounds, and if it found the rule was, in itself, for any reason illegal as a violation of the act, the order might be valid and be a lawful order, although the Commission gave a wrong reason for making it. If it held the rule to be a violation of one section, the order to desist might be valid, if, instead of the section named by the Commission, the court should find that the rule was a violation of another section of the act. All the facts being brought out before the Commission or the court, the court could decide whether the order was a lawful one, without being confined to the reasons stated

by the Commission. We therefore look to see the ground taken by the Circuit Court.

That court found that the rule was adopted to uphold their published rates, or in other words to maintain the rates on the joint through tariff. Although, under the previous through rate tariff, these rates had been secretly cut by the Eastern connections of the initial carriers, yet when the routing rule was agreed to as part of the through rate tariff these rebates ceased. Hence, as the court said, the purpose of the rule was undoubtedly to maintain the through rate tariff, and that it was effectual. But the court held, as a result, that this routing provision, being part of the through rate tariff, agreed to by the various Eastern roads, made a contract among those roads for the pooling of freights on competing railroads within the meaning of section 5 of the commerce act. It held that it was not necessary in order to form a pool, in violation of that section, that the contract or agreement should fix the percentages of freight the several railroads were to receive, or that the railroads should know in advance what the percentages should be; that it was sufficient to constitute a pool if the contract or agreement provided for special means or agencies for apportioning freights, which would destroy the rivalry which would otherwise exist between the competing railroads; and an agreement by which the apportionment was left to the will of the initial carrier accomplished that purpose as effectually as though definite percentages were fixed in the contract; that defendant's plan to maintain through rates through the operation of the routing rule necessarily destroyed competition, and the adoption of the routing rule put the shippers in a position where their patronage could not possibly be competed for by the defendant's Eastern connections.

Thus the mere fact that the initial carrier was granted by this through tariff agreement the right to route the freight was held to result in the formation of a pool, in violation of the fifth section of the act. There was no other agreement proved in the case. It is stated by the Commission that the shipments are forwarded by the initial carrier so as to give certain percentages of the traffic to connecting lines. At the same time the Commission finds that initial carriers generally comply with the requests of the shippers to route the freight as desired. The substance of the report of the Commission is, therefore, that there is a certain percentage of the traffic given the connecting carriers when there is no request for routing given by the shippers. It amounts to the giving of fair treatment to the connecting carriers. It is true the Commission calls this a tonnage pool between the connecting carriers, to which the initial carriers give effect by their routing arrangement, and that its object was not so much to prevent rebates, which was but an incident, as to effect the tonnage division. We are of opinion, however, that the evidence is substantially one way, and that is that the arrangement for routing was to break up rebating, and

that it has been accomplished. The evidence before the Circuit Court was to the effect that there was no agreement whatever with the Eastern connections that any of them should have any particular proportion of the freight, but the Eastern roads entered into the routing agreement because they were satisfied that it would be better than the then present practice of rebating, and they thought that they would get a fair share of the business, or, in other words, would be fairly treated by the initial carriers, who gave them to understand that they would be so treated. The tonnage pool was, as the witnesses said, a myth, and it was testified to that there was not one of the Eastern companies that knew what percentage of the whole business that company secured. They simply knew that the through rates were maintained under the operation of the routing agreement and that rebating ceased, and they were satisfied with the manner of their treatment by the initial carrier.

The Circuit Court, in order to arrive at its result, necessarily treated the connecting carriers as rival and competing transportation lines for this freight, and assumed that between these lines there would exist, but for the routing agreement, a competition for the fruit transportation which could not be extinguished by any agreement as to routing, as a condition for making through tariff rates; that as competition was destroyed by this rule, it was idle to say that such result was not intended by the defendant, and so it was held that the carrying out of the routing agreement violated the act.

We think these various roads were really not competing roads within the meaning of the fifth section of the commerce act, when the facts are carefully examined. That act recognizes the right of the carriers to agree upon and provides for the publication of joint through tariff rates between continuous roads, on such terms as the roads may choose to make, provided, of course, the rates are reasonable and no discrimination, or other violation of the act is practiced. The initial carrier did not, on its line, reach the Eastern markets, but it reached various connecting railroads which did reach those markets. The initial carrier had the right to enter into an agreement for joint through rates, with all or any one of these connecting companies, though such companies were competing ones among themselves. And the agreements could be made upon such terms as the various companies might think expedient, provided they were not in violation of any other provision of the act.

Prior to the adoption of the routing rule these connecting railroads were already acting under a through rate tariff which continued up to the time when the agreement for the routing was adopted. When so acting it was no longer possible to compete with each other as to rates, (and it is upon the rebates as to rates that this whole controversy is founded,) provided the companies fulfilled their joint rate tariff agreements. The only way the

rate competition could exist under the through rate tariff was by violating the law. This, unfortunately, was habitually done, and during that time the competition consisted in a rivalry between these roads, as to which would be the greatest violator of the law by giving the greatest rebates.

In truth, the only way in which these connecting lines could legally become competing railroads for this California fruit trade would be in the absence of all joint tariff rate agreements. The moment they made such agreements, and carried them out, rate competition would cease.

All that would be needed for the total suppression of rate competition among the connecting railroads would be the honest fulfillment of their agreement as to joint through rates. And just here is where they failed and where they violated their agreement and the law by granting rebates, or, in other words, by competing, as to rates, for the freight in violation of the joint rates. In such case we do not see any violation of the pooling section of the act, by putting in the agreement for joint through rates the provision for routing by the initial carrier. It achieved its purpose and stopped rebating, although it thereby also stopped rate competition which, in the presence of the through rate tariff, was already illegal. The railroads are no longer rate competing roads after the adoption of a through rate tariff by them, and they have no right to privately reduce their rates.

Now, while the most important, if not the only, effect of the routing agreement is to take away this rebating practice, and to hold all parties to that agreement as part of the joint through rate tariff, we think no case is made out of a violation of the pooling provision in the fifth section of the act, even where the initial carrier promises fair treatment to the connecting roads, and carries out such promises.

We must remember the general purpose of the act which is, as has been said, to obtain fair treatment for the public from the roads, and reasonable charges for the transportation of freight and the honest performance of duty, with no improper or unjust preference or discrimination. Under such circumstances, the court ought not to adopt such a strict and unnecessary construction of the act as thereby to prevent an honest and otherwise perfectly legal attempt to maintain joint through rates, by destroying one of the worst abuses known in the transportation business. The effort to maintain the published through joint tariff rates is entirely commendable.

We think that the agreement in question, upon its face, does not violate any provision of the commerce act, and there is no evidence in the case which shows that in fact there has been any such violation.

The decree of the Circuit Court is reversed and the case remanded with instructions to dismiss the bill.

Reversed, &c.